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ABSTRACT

Essays concerning multiple aspects of integrating the concept of professional equality between the sexes into the field of sport are presented. The abstract idea of sexual equality is examined, and methods for determining the degree of equality present in given working situations are set forth. A discussion of the laws, enforcing agencies, and court procedures attendant upon anti-sex discrimination includes measures by which social change may be effected. Resources for the victim of sexual discrimination are listed, and a model is provided for the organization of local support groups. The importance of intergroup reinforcement is stressed. Examples of how to file a sex discrimination complaint are given, and a listing of the National Coalition for Women and Girls in Education members is appended. (LH)

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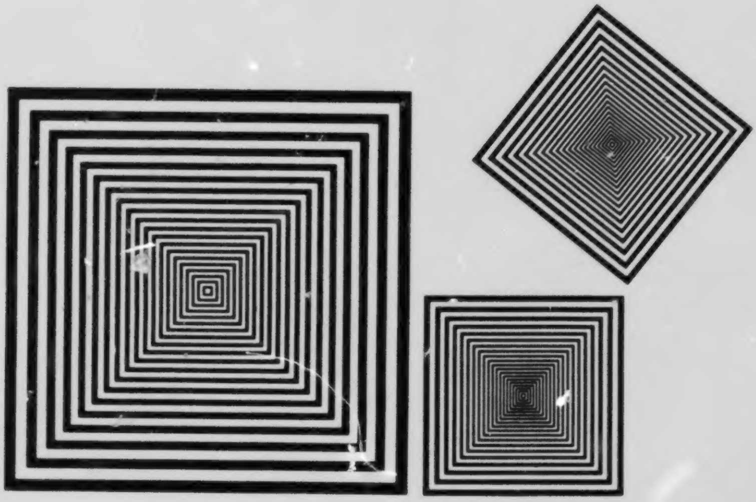
EQUALITY IN SPORT FOR WOMEN

Patricia L. Geadelmann
Christine Grant
Yvonne Slatton
N. Peggy Burke



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American Alliance for Health, Physical Education, and Recreation
1201 Sixteenth Street, N.W. Washington, DC 20036

Introduction

We have all faced issues on which we did not agree and have experienced that which we felt wrong or unjust. But in those inequitable situations we have often been hesitant to rebel. Most often we have held our tongues and persevered. The days of silence and suppressed protest are beginning to disappear, and more and more people are exercising their right to speak up.

The courts today are often upholding the rights of employees to criticize their employers publicly. The right of free speech under First Amendment protection is not only making such criticism possible but is encouraging it. Employers are prevented from trying to silence or punish those who do speak out. Federal laws protect individuals who file discrimination suits from harassment by employers.

The law today not only prohibits discrimination but prohibits repression of those who attempt to have discrimination eliminated. The right to speak up is indeed protected, and it is this right which must be exercised if discrimination is to be eliminated.

This book was written to provide the public with the tools to "speak up" against discrimination, to "speak up" for equality. Defining equality, knowing the laws of its enforcement, understanding the court procedures, realizing the avenues for change, and committing oneself to action are all essential tools addressed within this text.

Patricia L. Geadelmann

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CHAPTER I

What Does Equality Mean?

Christine Grant

Introduction

This chapter was written with the assumption that all recent federal legislation prohibiting sex-based discrimination was necessitated by the fact that women in the past have been the object of discrimination, even though there are instances where the reverse may be true. Perhaps the validity of this assumption can best be demonstrated by an examination of interscholastic and intercollegiate athletics for males and females in this country in the twentieth century. However, a study of many physical education programs could also support the assumption.

This section deals not only with the *letter* of the law but also the *intent* of the law. Unfortunately, the letter and the intent are not always in harmony and, in some instances, appear to to be in conflict. In addition, since the definition of equality may differ because of different perspectives, there has been an attempt to examine the concept of equality as it is perceived by the various groups affected, i.e., students, faculty and administrators. In the process, major problems are discussed. To fuse the letter and the intent of the law, there is also a brief summary of what seems to be "just and fair" to the people involved.

Many administrators may agree with the suggestions offered; others may not. Their reactions depend on their definitions of equality. Many lawyers may agree with the interpretations offered, while others may not. Unfortunately, it is likely that only court cases will be able to give the "correct answers" and this may take years! Meanwhile, it is essential that each individual attempt to establish her/his own definition of equality and the administration's definition of equality as a starting point for progress.

I. The Problem of Words: Equality/Equal Opportunity/Comparability/Equity

According to Webster's dictionary, the synonym for equal is "same," and one of the early meanings of the word is "exactly the same in measure, quantity, number or degree: like in value, quality, status or position," Equality is defined as: "character or condition of being equal." From these words, there is the implication of *no differences,* and certainly the intent of recent federal legislation has been to create the stage for a society where all people, regardless of gender, will be treated in the same manner.

In the transition stage, problems have arisen, since it is impossible to merge two unequal parts and create a whole which demonstrates equality. The problems encountered in achieving equality for the black race in this country perhaps best illustrate this point. Hence, during the transition period, the law has encouraged the creation of affirmative and remedial action programs to accelerate the move toward equality.

Equal opportunity, a term associated with many pieces of legislation, again implies the necessity to offer the *same* opportunity. However, in the Title IX Regulation, and especially in the Athletics section 86.41, c, "equal" obviously does not mean the "same" with regard to the selection of sports for males and females and most especially with regard to equal funding for male and female teams or programs. Hence the word *comparability* has come into vogue. But what does the term mean?

The dictionary definitions of "compare" are interesting. Namely, for the transitive verb they are: "(1) to represent as similar; to liken; (2) to examine the character or qualities of, for the purpose of discovering their *resemblances or differences*" (author's emphasis). For the intransitive verb, it is: "to be like or equal; to admit, or be worthy of, comparison." With this word, while there may be strong similarities or samenesses, there is also the implication that differences may exist. The crucial question becomes: to what extent may differences be permitted?

It is at this point that one tends to believe that this transition period between now and the true emergence of equality in our society will be impossible to cope with. There is yet another word which may help solve a difficult situation: *equity.* Among the definitions are the following: "(1) state or quality of being equal or fair; fairness in dealing. (2) that which is equitable (just) or fair."

While equality may be the ultimate objective, perhaps equity should be the immediate objective. With regard to achieving equity at a given institution, perhaps all proposed actions could best be evaluated by examining them in light of the following crucial questions:

- Will the action enable the disadvantaged to move expeditiously in a positive direction toward equality?
- Will the action in any way further disadvantage the previously disadvantaged group?

Obviously the answer to the first question should always be "yes" and the answer to the second, "most definitely not."

II. Equality or Equity from the Student Perspective

As previously mentioned, equality has the implication of "no differences" in the opportunities for, and treatment of, people regardless of gender. Thus, in the future, *if* one assumes that no significant differences exist between the sexes that could affect performance in physical education or athletics, then one would anticipate that all physical education classes and intercollegiate athletic teams would be open to all students, hence coeducational.

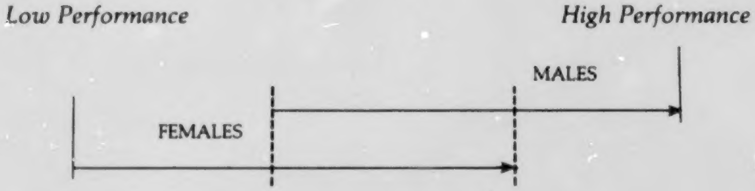
The impact of state and national Equal Rights Amendments remains to be seen; however, there seems to be little question that they will have significant implications for the issue of coeducational versus single sex physical education and athletic programs. (For more detailed discussion of the Equal Rights Amendments, see Chapter III.)

KEY ISSUE: SINGLE/SEPARATE PHYSICAL EDUCATION CLASSES

It will be noted that the previous predictions were based on the assumption that there are no significant differences between the sexes which would affect performance in physical education and athletics. However, *at the current time*, one must conclude that in the population as a whole, there *are* significant differences which could affect the physical performance. These differences may exist for one or both of the following reasons:

- Historically, girls and women have been denied the opportunity and the encouragement to develop their physical skills. Moreover, the societal attitude, still present in the 1970s, tends to berate the athletic accomplishments of women and has provided much of the "rationale" for continuing flagrant discrimination against women in sport. For these reasons, it has yet to be determined what women's physical capabilities are.
- There is substantial research to verify the claims that, following puberty, there are significant differences between the sexes with regard particularly to height, weight, and strength factors.

With regard to physical education, it appears that HEW has rejected both of these reasons, for it is mandated in Title IX that "a funding recipient may not operate classes or activities separately on the basis of sex" (31, p. 15, sec. 3) and that the program must be operated without discrimination on the basis of sex. Perhaps it is hoped that the students will best be served by a functional (ability) classification rather than a sex-based classification. However, it should be noted that following puberty, males are at the favorable end of the range for physical, if not societal, reasons as shown below.



Note: The extent of the overlap has yet to be determined.

Perhaps in the future it will be shown that the legislative objective is disserviced by such a classification; for while stereotyping could be eliminated by such a classification, actual physical differences will not disappear.

KEY ISSUES: SINGLE/SEPARATE ATHLETIC TEAMS

In what appears to be a paradoxical position, the Department of Health, Education and Welfare for one or both of the aforementioned reasons has permitted separate athletic teams to exist for males and females "where selection for such teams is based upon competitive skills or the activity involved is a contact sport" (48, pp. 24142). It would therefore appear that the intent of the Title IX Regulation with regard to intercollegiate athletics is to have *equality* in some instances and *equity* in others.

One of the key questions arising from this section in the Title IX Regulation is: Single or separate teams—what constitutes equality/equity?

As viewed by some people, the solution to the problem is to allow both sexes to try out for all teams; and in theory, the result would produce coed teams with all students treated in exactly the same manner. However, again the basic assumption is that there are no significant physical differences between the sexes. While opponents to this solution may agree that this proposal would theoretically give women immediate access to the many advantages in the better funded men's programs, they are also quick to point out that the *effect* of this policy would be to create predominantly or exclusively male teams, thus the principle of equal opportunity would be violated (108).

To prevent the anticipated imbalance, several other alternatives have been suggested (108):

1. Field two teams in each sport where the varsity team is open to male and female students, while the second team is open only to females. Several problems could arise with this solution:
    - The action would be discriminatory against males
    - The most highly skilled women would be competing in the coed team, therefore substantially reducing the quality of the women's team
    - There could be administrative problems with regard to scheduling against comparable "varsity" teams.
2. Field two teams in each sport where the varsity team is open to male and female students while the second team has a 50–50 male/female ratio. Again, it is likely that the varsity would be predominantly male and therefore overall the men would have a greater opportunity for participation.
3. Field one or two teams in each sport and have a 50–50 male/female ratio in each instance. This suggestion shows real possibilities for certain individual sports if competition is structured so that males compete against males and females compete against females, e.g., golf, tennis and badminton. In most sports, time periods of events could be alternated so that males could compete against males and females against females, with the final result being the aggregate score. Obviously this would be a fast method by which to achieve equality of treatment of students. Moreover, travel expenses would be consolidated in this aspect of the program. However, in other instances greater travel expenditures and time commitment would be necessitated if the women's teams had to be drawn into the geographically large conferences, e.g., the Big Ten, Pacific Eight, etc. Because of the difference in level of competition, most women's teams are currently able to schedule within the state or a small geographic area (see page 00). With many of the team sports (e.g., football, basketball, volleyball, field hockey) additional problems arise, revolving around:
    - the ability of women to compete *safely* with men when height, weight, and strength differentials are reflected in the sport
    - the *fairness* of men competing with women when height, weight, and strength differentials are reflected in the sport. Such differ-

ences may result in either ostracism or unfair exploitation of the females on the team.

4. Field several teams based on height/weight classifications. Theoretically this would produce coed teams, but the following problems could occur:
   - It is highly possible that the strength factor would favor males even when the height/weight factors were kept constant. This again could produce predominantly male teams which would perpetuate discrimination against women
   - The system would be expensive because it would require a great number of teams
   - It would be necessary for many schools and colleges to adopt this system; otherwise the scheduling of comparable competition would be impossible.

5. Field "separate but equal" teams for each sex in every sport. Because of the problems which arise when attempting to provide equality (sameness), many in athletics are advocating *equity* in this instance, i.e., "separate but equal" teams for females and males at the current time. Legally the "separate but equal" doctrine, which has been considered to be inherently unequal with regard to the racial situation (133), has been permitted by the Title IX Regulations, and it is likely that the rationale has been that the interests of females cannot be served in any other way. However, while this solution tends to alleviate the problem of opportunity for students to participate in athletics, several questions arise:
   - Should there be an *equal* number of sports offered to males and females?
   - Should the *same* sports be offered to males and females or can there be different sports for the sexes?
   - Should there be the same number of teams in each sport?
   - Should there be the same number of players on each squad?

It is at this point that the institution has choices, and hopefully the administration's decisions will reflect *just* solutions which reflect the interests and abilities of both male and female students.

This may be the ideal time to stress the need for *equity* with regard to the number and kinds of sports and the number of teams open to male and female students, while achieving *equality* with regard to the treatment of students in all sports. Unfortunately the institutions appear to be making slow progress toward either objective. At many schools and colleges, female students have yet to experience equity of offerings and at very few (if any) institutions is there equality in the treatment of students. This is why federal legislation is necessary.

6. Field three teams (one male team, one female team, and one coed team). Although this would provide for more participants, which many people advocate, there would also be some problems, such as the expense and the difficulty of scheduling competition for all teams. Moreover, the ratio of male/females and the problems related to the mixed teams in team sports still must be dealt with.

Where no comparable team exists for one of the sexes, the following suggestions may be considered:

- the creation of a team for the disadvantaged sex if interest and ability warrant it
- the opening of the opportunity to both sexes if there are insufficient numbers to form two separate but equal teams. It should be noted here that the problems already mentioned in relation to coed teams would have to be solved (e.g., ratio, safety, etc.).
- keeping such teams closed to one sex, *if* there is a *pattern* of equal opportunity for athletic competition for both sexes at an institution, e.g., eight sports for males and eight sports for females, though *not* necessarily the same sports.

KEY ISSUES: SCHOLARSHIPS

Currently, under Title IX Regulations, an institution need not offer an identical number of athletic scholarships for each sex. Rather, an institution "must provide *reasonable opportunities for* such awards for members of each sex *in proportion to* the number of students of each sex participating in interscholastic or intercollegiate athletics" (48, p. 24142) (author's emphasis).

Thus, rather than mandating equality on this aspect, HEW has attempted to legislate equity, which will be difficult to determine, due, in part, to the following factors:

- differences in the number of sports offered to males and females (but this could be fairly easily corrected by the institution)
- differences in the number of players on each squad when separate teams in the same sports are available (this could also be easily corrected by the institution)
- differences in the number of teams offered in each sport, e.g., often only a varsity team is available to one sex while the other sex may have opportunities to be selected for two, three or four

teams. In some institutions this is a philosophical difference between those in control of men's and women's athletics, i.e., tending toward the principle of participation for many, as opposed to participation for the selected few. Again, this should be rectified at the institutional level.

- differences in the number of students participating in what could be termed "comparable" sports opportunities, e.g., football and field hockey. Of all the problems mentioned, this is the most difficult to solve and has caused considerable pressure from the NCAA and supporters of men's athletics to be brought upon HEW to exempt contact and/or revenue-producing sports from Title IX. Although the attempt has been unsuccessful to date, the loophole for an imbalance in financial aid opportunities still exists. For example, in the "comparable" sports of football and field hockey, where the number required to play each game is identical, the number typically carried on each squad differs significantly. At many institutions, approximately 140 men are on the football squad, while approximately 20 women are on the field hockey squad. NCAA regulations for Division I schools permit 95 scholarships (reduced from 105 in 1976) to ease financial problems. Many people question why intercollegiate football teams need 95 scholarships when professional teams carry only 43 players. This problem of numbers undoubtedly caused HEW to create the "proportional" solution. Thus, if 400 men and 200 women participate in athletics, an institution could be expected to provide scholarships on a 2-1 basis. It should be noted that compliance with the proportional requirement probably will be judged on an entire male/female program basis rather than on a sport-to-sport basis. In addition, contact sport scholarships do not appear to be exempted from this proportional requirement.

If any institution is truly committed to the concept of equality with regard to financial aid (and Title IX has *not* mandated this), there are two alternatives:

- Decrease the number of football scholarships to a number comparable to all other teams
- Permit increased participation in women's athletics, i.e., the creation of additional teams (2nd, 3rd and 4th teams) until the number of male/female participants is equal.

It is unlikely that many institutions could financially cope with the second alternative, and thus the first would appear to be the only solution. Unfortunately, any courageous institution willing to take this step might also be committing financial suicide, since only a few of the top athletes could be attracted to any given institution. As a result, it would be difficult to field top competitive teams, spectators might decrease in numbers, and the revenue to support other athletic teams would disappear. Consequently, it would be imperative that such a step be taken, not by one institution, but by the *entire nation*. The solution to this problem *must* lie entirely on the shoulders of the main national governing organizations. Such a mandate could only be made if sufficient individual institutions recommend and support it. Might not every school other than the super-powers stand to benefit by *drastic* cuts, e.g., to 20 football scholarships? Is there not a strong possibility that the top thousand high school football players would tend to distribute themselves across the nation and create more equally balanced teams?

Basically the same argument can be made with respect to the maximum amount of each scholarship. Briefly, the situation is such that

- Legally it is questionable whether an institution can offer full-ride scholarships to men and tuition-only scholarships to women.
- Few, if any, institutions can afford to duplicate the full-ride scholarship system for women, e.g., tuition, room and board, and books.
- Hence, if the institution cannot financially afford the maximum amount for female scholarships, another alternative would be to reduce the maximum amount for male scholarships.
- Once again, this action by an individual institution could be suicidal under the present system.
- Another alternative within an institution is to reduce or eliminate the scholarships for the male non-revenue sports (this appears to be occurring already). Once more, it is a philosophical decision which can be made at the institutional level, but opposition to such a solution is likely to come from the men's "minor" sports and from those in women's athletics since the philosophy of the latter group seems to favor the "all sports are created equal" principle.

Perhaps the entire controversy will be resolved by the combined efforts of governing organizations for both men and women. Failing this, however, perhaps an emergency national meeting of all college presidents could be called to deal with the situation since it is the presidents who ultimately must be accountable in terms of equality and in balancing the budgets. Another possibility would be to have a combined meeting of representatives—college presidents and leaders of men's and women's athletic governing organizations.

KEY ISSUES: UNEQUAL EXPENDITURES

There are several problems related to the mandating of equal expenditures for men's and women's athletic programs:

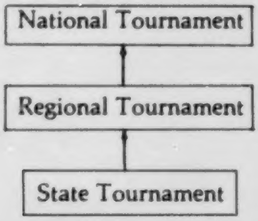
- differences in the number of participants (see previous section)
- scholarship expenditures (see previous section)
- men's conference structure versus women's conference structure
- sources of funding for men's and women's programs (see pages 21–23).

The fact that Title IX has not mandated equal aggregate expenditures for the male and female programs has brought considerable criticism. Doubtless much of this criticism has come from those directly concerned with girls' and women's athletic programs and from those alarmed by the results of a 1974 informal survey conducted by *WomenSports*. In this article it was stated that: "In schools, boys' budgets, on the average, were five times larger than girls'; in colleges men used thirty times as much money. And that's only an average. In some universities, the men's budget was 100 times as great as the women's in the '73–'74 academic year." (122, p. 37).

Obviously those committed to the concept of equality cannot support the Title IX loophole which permits the continuation of such discrimination. This position has been stated by the American Civil Liberties Union which, commenting on an early draft of the Title IX Regulations, stated that: "Although an evaluation of expenditures would surely be the most effective criterion for assessing institutional compliance with the other subdivisions of 86.38 (86.41 in the current Regulation), the final provision (equal expenditures not required) makes such an evaluation impossible" (31, p. 16, sec. 3). Moreover, it is noted that the separate but equal team structure must ensure equality, and that this "cannot be assured unless equal *per capita* expenditures for each sex are required" (31, p. 14, sec. 14).

Legally it may be possible to argue that the overall legislative objective is disserviced by the unequal expenditures provision because this specific objective is improper (i.e., if the objective is to keep women from participating in athletics), or because this objective is based upon an erroneous assumption (i.e., women do not want to participate in certain sports). Moreover, the courts may rule that cost savings do not justify the denial of equal protection or that such a provision denies equal educational opportunity (31).

The main problem in this area not discussed in the previous section is the men's conference structure. The current situation is that male teams in many institutions are bound into geographically widespread conferences. The majority of the women's teams, on the other hand, have open scheduling, which permits the scheduling of nearby comparable teams in each sport, with access to top competition assured through successful performances in the following structure:



This difference in scheduling helps to account for at least part of the differences in the unequal expenditures since travel costs constitute a fair section of the budget. To duplicate the current conferences or to incorporate women's teams into existing conferences is financially out of the question and competitively unnecessary at this time. It is essential for each institution to evaluate whether such conferences for men in the future will be financially feasible and/or competitively necessary. Again, it will take a courageous institution to withdraw the men's teams from such conferences.

The entire issue of equal expenditures is further complicated by an apparent difference in philosophy between those in men's and women's athletics. At one end of the spectrum is the big-business athletic program where everything is accorded the athlete and where, in return, winning performances are expected or demanded. At the other end is the club sport, wherein few provisions, financial or otherwise, are accorded the athlete and wherein the participants make demands upon themselves with regard to results (wins). Between the two extremes, but closer to the club sport than to the business sport, lie most women's athletic programs. Those in control of such programs are caught in a bind. Philosophically they are more oriented toward maximum participation and athletics for the athletes' sake rather than for the spectators'; yet, they are also committed to the concept of equality and are opposed to discriminatory practices. To such people, the optimal level for *all* athletic programs lies between the concept of club sports, which tends to necessitate considerable financial outlay by the individual student, and the concept of big-time athletics, which tends to necessitate considerable financial outlay by the institution. To achieve the optimal level may necessitate the curtailment of many current male programs, and although institutions may agree that escalating the women's programs to male levels is not financially possible (or educationally sound), the same institutions are making no move to effect any curtailment of male programs. Until they do, it would appear that women are left with no alternative but to attempt to escalate their programs to achieve equality.

KEY ISSUES: DIFFERENCES IN REGULATIONS

Ultimately, in any given institution, the rules and regulations for male and female athletes should be the same. Currently there are considerable differences, and while "reasonable" differences may be permitted under Title IX, that which is "reasonable" has not been defined. Among the key differences are the following:

- differences in eligibility to participate
- differences in eligibility for scholarship.

While it may be legally possible to maintain such differences, since Title IX permits the existence of different administrative structures for men's and women's programs at the institutional level, this is an issue which should be addressed. Again, the solution to the problem would appear to lie at the level of the national organizations. While no progress has been made at this level to date, attempts are being made to determine if rules based on philosophical approaches can be legally defended. At some institutions the adoption of the more stringent rules (usually the men's rules) are being considered in order to solve the problem. This solution, however, may cause opposition from those in women's athletics since this could be regarded as the first step toward the adoption of the "male athlete model" as the institutional "model," thereby eliminating the possibility of the creation of an alternate approach.

Hopefully the problem in this area can be solved either by a joint committee of representatives from all governing bodies or, if necessary, by a joint committee comprised of college presidents and the representatives from the governing bodies.

KEY ISSUES: RECRUITING PROCEDURES AND PRACTICES

Recruitment has problems similar to those discussed previously:

- Most institutions cannot afford to duplicate the current male model of recruiting procedures and practices.

- Many of those in women's athletics appear to be philosophically opposed to such procedures and practices.

It is a current practice for many in men's athletics to attempt to entice the best athletes to a given institution, whereas those in women's athletics frequently coach the best athletes who have already enrolled at the institution. The problem confronting the institution has been summarized this way.

> The issue of sex discrimination does not rest on whether or not recruiting is desirable. It rests on equality. For example, if an institution feels that recruiting student athletes is not desirable, it may wish either to use the pressure for equity to de-emphasize recruiting for males, or to begin recruiting female athletes with the same intensity they have been recruiting males. (108, p. 9)

Again, it would appear necessary for college and university presidents who are aware of the overall financial situation to meet with the leaders of national intercollegiate governing organizations to resolve this problem.

PUTTING PRINCIPLES INTO PRACTICE: RECOMMENDATIONS FOR CONSIDERATION: ATHLETICS

1. Affirmative action steps should be taken to overcome the effects of past discrimination and to encourage women to consider the opportunities now afforded them in intercollegiate athletics.
2. There should now be an *equitable* number of opportunities for males and females to compete in athletics if a sufficient number of students express an interest in obtaining such opportunities. Ultimately there should be *equal* opportunities. The current difference between the male and female standards of performance should not justify an imbalance in offerings. There must be affirmative action to equalize the opportunities.
3. Where a current imbalance of male/female participants exists, an institution should be required to prove that the situation is not being created by discriminatory practices.
4. At the current time, sex-segregated teams appear to be the most viable option since the other alternatives are less equitable to women. (Exceptions: pre-puberty teams and where no comparable team can be created for the disadvantaged sex.)
5. True equality should exist in other areas:
    a. There should be no overall pattern of difference in the provision and quality of supplies and equipment for male and female teams.

b. There should be an equal sharing of all facilities for practice and game schedules. Practice and game times should also reflect equality.

c. There should be an overall pattern of equality with regard to the number of practices, the number of games, and the quality of competition.

d. Per diem allowances should be the same for all athletes.

e. There should be an institutional policy to ensure equality in means of transportation available, according to distance to be traveled and size of team involved.

f. All students should have the benefit of having highly qualified coaches. The ratio of student/coach should demonstrate the principle of equality.

g. All students should have the same academic tutoring opportunities.

h. Both sexes should experience the same quantity and quality of locker room provisions.

i. Both sexes should have equal access to the same medical and athletic training services.

j. The provision of housing and dining facilities and services should reflect the same opportunities for all athletes.

k. Athletes should be equal with regard to privileges, e.g., credit for participating, exemption from physical education requirements, awards for participation.

l. School/university publications and any public information offices of the institution should reflect equal concern for the publicity of the girls/women's programs.

m. All athletes should be adequately insured.

n. There should be equal opportunity for athletes interested in obtaining employment.

6. During the transition period there should be at a given institution:
    a. financial aid equity awarded on a proportional basis
    b. equity in expenditures, reflected in equitable per capita figure
    c. pressure by individual institutions upon national organizations to resolve the problems related to equality in: financial aid, expenditures, rules and regulations, and recruiting procedures

7. In the future there should be stated goals to ensure that, [illegible] a given institution, there will be equality with regard to:
    a. financial aid opportunities
    b. expenditures for male and female programs
    c. rules and regulations
    d. recruitment procedures and expenditures

RECOMMENDATIONS FOR CONSIDERATION: PHYSICAL EDUCATION

1. If it is believed that significant differences exist between the sexes with regard to physical performance, it appears desirable in the post-pubertal years to offer single-sex sections *and* coed sections in activity classes to satisfy both the letter and the intent of the law.
2. Where the above is unfeasible, it is possible that two grading standards will be necessitated since it may be totally unfair to the female sex to grade on one standard.
3. It is essential that physical education requirements for graduation be the same.
4. It is imperative that there be equal sharing of facilities and an equality of equipment available to all students.
5. With regard to physical education majors at the college level, it is necessary that equality exist with regard to:
   a. grade point average requirements
   b. course requirements
   c. opportunities to obtain the same credentials, e.g., coaching classes, coaching certification, etc., because, as stated in one document: "Policies which prohibit one sex from taking courses which develop their skills would have the lingering effect of limiting future job opportunities and would be a violation of Title IX" (108, p. 4).

III. Equality or Equity from the Faculty Perspective

Several laws have been passed to prevent discriminatory practices in employment, and all aspects of employment are now covered by one or more federal laws, i.e., hiring, salaries, opportunities for promotion and advancement, availability of support services, and fringe benefits (State Equal Rights Amendments, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Equal Pay Act of 1963, and Executive Orders 11246 and 11375). Therefore, *in theory* there should be equal employment opportunities for women in physical education and athletics; in practice, however, this is not the case.

KEY PROBLEMS: SALARIES

At the public school level the salary problem does not generally exist for those in physical education since most school boards have established wage scales based on educational qualifications and years of experience. A few districts, however, continue to credit military experience on the salary schedule and to provide supplements for heads of household.

These practices typically are beneficial only to males and therefore constitute a source of discrimination. In interscholastic athletics, there have been considerable disparities in the financial reimbursement for male and female coaches despite the fact that women are often equally qualified and often work the same number of hours as their counterparts. Sometimes, regardless of the gender of the coach, those in women's athletics are paid less than those in men's athletics.

At the college and university levels, there appear to be salary problems in both physical education and athletics. According to the Ashcraft study (1), in colleges and universities male physical educators were paid higher salaries than female physical educators when rank and degree were equal.

The entire question of salary differential, however, is very complex because it is dependent not only upon educational qualifications (degrees) and experience, but upon "productivity" as well. Hence, in many instances, the higher male salaries have been "substantiated" by the fact that there was greater productivity by the men, which prompted male promotions at a faster rate. Further investigation, however, may show that in many institutions men enjoy lighter teaching loads, more time for research with greater access to research facilities and equipment, and more secretarial assistance.

In the area of athletics at the college and university levels, the salary differential is even more obvious and more complex. Briefly, the problem revolves around the fact that at many institutions male coaches are hired, promoted, retained and paid according to different criteria than those used for all other faculty. In fact, some football coaches are paid more than university presidents or school superintendents. Many of the women, on the other hand, have been and still are associated with the physical education department and hence follow the criteria for the general faculty.

Two essential questions arise:

1. Do the women wish to demand equal pay for equal work? If this is the case, then it is simply a matter of proving that the duties of the coaches are substantially similar by way of skill, effort and responsibility. Incidentally, the fact that many male coaches spend a large portion of their effort on recruiting athletes, which the female coaches are prohibited from doing (AIAW regulations), may be offset by the fact that female coaches often have heavier teaching loads and departmental responsibilities. Whether recruiting would be held to be "substantially similar" to teaching and department responsibilities and thus require equal pay is yet to be determined. It is, however, a matter worthy of investigation.

2. Does the central administration wish female coaches to follow the criteria for general faculty *or* follow the criteria for those in men's athletics? While philosophically (and financially!) the institution may prefer the former, it is highly unlikely that the courts will permit the continued discrimination. Hence the institutions must decide whether to raise the female salaries or to adopt a long-range plan to bring the male salaries back into line with the general faculty salaries. Under precedents set by decisions based on the Equal Pay Act, salaries cannot legally be reduced. This means consequently, the new appointees should be paid in accordance with the highest (men's athletic) salaries.

Also tied into the question of salary is the tenure/non-tenure tract question. One of the points in the rationale for higher salaries for the male coach is the fact that he suffers from job insecurity. However, many institutions are apparently hesitant to open the tenure tract to female coaches and therefore women enjoy neither the security advantages afforded general faculty nor the financial advantages afforded the men's athletic faculty.

It should also be noted that where men's and women's athletic departments have been merged, it would be more difficult (if not impossible) to justify salary inequities and/or differences in criteria for promotion, retention, etc.

Institutions have the responsibility to rectify this situation, which can be remedied only by a thorough analysis and a careful consideration of the long-range consequences of today's decisions.

KEY ISSUES: EQUALITY OF OPPORTUNITY IN OBTAINING TEACHING, COACHING AND ATHLETIC ADMINISTRATIVE POSITIONS

By law, all positions must be open to members of both sexes, even in the athletic situation where there are separate teams for males and females. Unfortunately, however, in many instances the laws appear to be working against women in both the public schools and institutions of higher learning. Briefly, the situation is that "the best qualified person" is given the position, and the "best qualified" in many cases is deemed to be a male candidate.

The situation in physical education is such that, because of past discriminatory practices, women, who have tended to have heavier teaching loads, with less time and equipment for research and therefore lower ranks, are being bypassed for the teaching and administrative better positions and/or promotions.

In athletics, many women are also being bypassed since men historically have had the opportunity to be both high-level competitors and well-qualified coaches, while women have not. Therefore, with the sudden growth of women's interscholastic and intercollegiate athletics, male coaches are finding an increasing job market, while the female coaches who had previously voluntarily coached the semi-competitive teams of the 60s are discovering that they cannot compete on the job market with the male applicants in terms of experience and paper qualifications. This may be particularly true where male and female athletic programs have merged and the female coach suddenly finds herself in the "assistant coach" role. This step obviously places such females in non-decision-making roles, which is hardly the intent of all recent federal legislation.

The same trend is apparent with regard to the athletic director positions. Women, who for some time have voluntarily administered the embryonic intercollegiate athletic program for women, have suddenly found themselves as "assistant" athletic directors in combined departments and hence have been subtly removed from decision-making positions.

This trend not only creates a more unjust situation for women in general but also very effectively denies those in women's athletics the opportunity to create a viable alternative model for athletics.

KEY ISSUES: MERGED VERSUS SEPARATE DEPARTMENTS

A key question in the issue of merged versus separate departments is: "In which structure are women more likely to have equal opportunity and equality of treatment?" The previous section has largely dealt with this question, and perhaps the concerns of women can best be represented by the following reports:

1. In Ashcraft's 1972 study, which elicited responses from 1,221 physical educators from 131 public coeducational colleges and universities, some of the findings revealed that:
    - Greater differences existed among physical educators differentiated by sex than by the administrative structure of the department in which they taught.
    - Men physical educators usually had better employment conditions than women teachers.
    - Reorganization of the departmental structure resulted in few changes in the load and level of classes taught by physical educators.
    - Women faculty members who had a female department chair-

man generally had better employment conditions than women who had a male department chairman. (1, p. 2)

Note: As mentioned previously, it was also found that men were paid higher than women when rank and degree were equal.

2. Although Ashcraft established that discrimination against women occurred in both separate and merged physical education departments, some of the results of a study by Fornia (65) should be noted. According to the respondents (73% of 476 representative physical education faculty of public and private institutions of higher education in 48 states and Canada):

> Inequity is also the nucleus of an issue regarding mergers of men's and women's departments of physical education. Respondents noted that in departments which have merged, opportunities for women in administrative capacities, as well as their opportunities to teach theory courses, have decreased. (65, p. 36)

3. A recent report on the Harvard/Radcliffe merger noted that in athletics:

   - The women's athletic director relinquished most of her authority to the male athletic director.
   - The male Harvard coaches were made administrative heads of the sports in the Radcliffe program.
   - There were blatant inequalities in the sharing of facilities.
   - The budget for women neither improved nor allowed for necessary program development and expansion. (64, p. 39)

4. The NAGWS, concerned with the possibility that Title IX will be used as a vehicle to further disadvantage women, has suggested that, prior to a merger of separate administrative structures, institutions should be required "to develop affirmative action programs demonstrating how a merger can be effected in a nondiscriminatory manner and to develop validated predetermined standard for employment selection." (10, p. 39)
5. The Report of the Carnegie Commission on Higher Education, focusing on the status and role of women, indicated continued discrimination against women in education. In addition, the report stated:

> We favor the continuation of colleges for women. They provide an element of diversity among institutions of higher education and an additional option for women students. An unusual proportion of women leaders are graduates of these colleges. Women generally (1) speak up more in their classes, (2) hold more positions of leadership on campus, (3) choose to enter more frequently into such

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> "male" fields as science, and (4) have more role models and mentors among women teachers and administrators. We oppose the homogenization of colleges in general, and of all special cultures within them. (2, p. 5)

For the above reasons, there are those who also support, for the time being, the continuation of enclaves of women on coeducational campuses, e.g., separate physical education and athletic administrative structures. It will be noted that no specific administrative structure was mandated by law; in fact, it is stated that:

> institutions are not precluded from employing separate administrative structures for men's and women's sports (if separate teams exist) or a unitary structure. However, when educational institutions evaluate whether they are in compliance with the provisions of the regulation relating to non-discrimination in employment, they must carefully assess the effects on employees of both sexes of current and any proposed administrative structure and related coaching assignments. Changes in current administrative structures or coaching assignments which have a disproportionately adverse effect on the employment opportunities of one sex are prohibited by the regulation. (51, pp. 3-4)

Perhaps the entire situation is best summarized by the Carnegie Commission:

> Women should be given more freedom of choice—and more options—than they have had in the past, both for their own sake and for that of society. This can and should be done without loss of academic excellence, and without artificially contrived controls.
>
> We should make possible the achievement of equality where situations are equal; but expect differences where situations are different. Women with free choices may, because of differing interests, make different choices from those of men, and their resultant patterns of action may not necessarily conform to those of men. Some women will lose productive years in the development of their competence. Differential patterns of activity are not evidence of discrimination if they are based on either free choice, or on different abilities to perform, or on a combination of both. (2, pp. 8-9)

KEY ISSUES: FRINGE BENEFITS

In all of education, where there are salary inequities, women not only suffer at the present time but also are disadvantaged during their entire retirement period. This occurs because the greater the contribution during the work years the greater pension during the retirement years.

In athletics, particularly at the college and university levels, there are additional "fringe benefit" problems which also must be resolved by the institution. Among these are such benefits as free cars given to male coaches by supportive car dealers in the community and opportunities for male coaches to supplement their incomes by radio and/or television shows. This can again create a philosophical dilemma for the administration and for those in women's athletics, especially in institutions where people are attempting to create an alternate model for athletics. Although these types of fringe benefits are not specifically addressed by federal legislation, some institutions are in effect perpetuating discrimination by permitting such practices.

PUTTING PRINCIPLES INTO PRACTICE: RECOMMENDATIONS FOR CONSIDERATION

The basic factors on which there should be equality are listed in Chapter II, e.g., work loads, office space, support services. However, in addition, the institution must immediately deal with the following:

1. development of criteria for employment of all coaches and supportive staff, i.e., hiring, salaries, opportunities for promotion, fringe benefits
2. the determination of an administrative structure that would best serve the needs of all faculty in physical education and athletics
3. development of an affirmative action plan to correct current inequities, coupled with a system which will regularly monitor progress toward the desired goals
4. establishment of a grievance procedure

IV. Equality or Equity from the Administration Perspective

KEY ISSUES: FUNDING

Not surprisingly, the main problem facing public school, college and university administrators is lack of money. Even in institutions where administrators may be totally committed to the concept of equality, this problem can create horrendous obstacles toward achieving equality.

In physical education, where the personnel and programs are funded by state and federal monies, a considerable sum is often required to correct inequities in salaries, facilities, etc. To compound the problem, at many institutions, state monies may *not* be used to finance athletic programs. The significance of this one factor is overwhelming, and a background on this is required to understand the problem.

In the early part of this century those in men's athletics were instructed that, in order to have a program, they had to raise the money for its upkeep. Fortunately or unfortunately, because of societal interest, this did not prove to be difficult, and in fact it became increasingly easy to develop the big business of athletics. Much criticism has been made over the years of men's athletic programs by the same society which had refused to assume basic responsibility for funding these programs. Now many large programs are caught in a cyclic bind: they are forced to be self-supporting; therefore they must attract spectators; therefore they must win; therefore they must attract the *best* athletes; therefore they must keep up with the Joneses across the nation; therefore if one institution does "it," so must all the others who are on the treadmill.

Strangely enough, many administrators and even state legislators who disapprove of funding athletic programs are more than willing to justify the existence of athletic programs and are quite prepared to argue that they are educational.

The crucial questions to be answered are:

- Is an athletic program an educational program?
- If so, why is it not primarily funded in the same manner as other educational programs?
- If not, why is it permitted to exist in educational institutions?

With most men's programs in financial trouble and with the growing needs of women's programs, the institutions are caught in a financial nightmare. According to Slatton's study (28), those directly involved with women's athletics (institutional representatives to the 1975 AIAW Delegate Assembly) desire to have the programs financed primarily through the normal institutional fund. However, it may be questionable legally whether men's programs can be forced to be self-supporting while women's programs are not.

On the other hand, those in women's athletics who would attempt to get an *equal* share of the men's revenue should realize that if they want to share the goodies currently produced by the men, they must be willing to accept the self-supporting concept and therefore be willing to create spectator sports programs and garner funds from alumni and friends.

The administration's main problem lies in the fact that unless state legislatures are willing to assist, the administration may have no option but to repeat the basic error and ask that women's programs also be self-supporting. This may be done, in spite of the fact that philosophically the administration may strongly disagree with this direction and despite the fact that this approach has led to serious problems in the administration of male athletic programs. In 1975 the Minnesota state legislature appropriated $700,000 for athletic funding in the state universities.)

Other possible sources of funding include income from student activities fees, availability of tuition waivers and/or special fund-raising activities. In addition, much of the expense of facilities, equipment and maintenance can legally be borne by state monies *if* such items can be primarily and legitimately utilized by educational departments, e.g., physical education and/or recreation. However, as is obvious, the main problem still reverts to the fact that athletics itself has not been recognized as an educational program worthy of being fully funded. These other possible sources of funding generally have disadvantages which accompany them, not the least of which is lack of consistency and security in funding from year to year and the dependency upon outside sources.

KEY ISSUES: PHILOSOPHY

Closely tied to the funding problem is a philosophical dilemma. In brief, the situation is that:

> Federal law does not dictate what specific philosophy or practices an institution must follow concerning sports because this is an educational decision which belongs to those who formulate educational philosophy at an institution. *Federal law does, however, require that, once a philosophy or practice is determined, it be applied equally regardless of sex and that it not have a disproportionate impact on one sex* (108, pp. 3–4).

The important questions which must be answered are:

- Are there substantial differences in the philosophical beliefs of those in male and female athletic programs?
- If so, which philosophical stance will the institution support?

As always with athletics, the issue is more complex than it appears, for one cannot ignore the reality of the situation, which unfortunately is that the philosophical foundation of any program is strongly affected and directed by the source of funding. For example, one cannot ignore the whims of spectators if the entire program is dependent upon their support. Nevertheless, this may be the ideal time to explore the issue to ensure the creation of *improved* athletic programs for both women and men.

To help establish whether there are significant differences between the philosophies of those in men's and women's athletics, administrators may wish to avail themselves of a questionnaire drawn up for this purpose. Grant (18) and Slatton (28) have developed such an instrument. The Grant study surveyed a total of 22 groups, 17 of which were directly associated with the University of Iowa and five of which were off-campus groups (AIAW and NCAA officers, male and female active fellows in the Academy of Physical Education, and members of the I Club). Among the findings were:

1. Women generally, and women associated with athletics specifically, believe more strongly than men in the need for an athletic program which will be organized, controlled, financed, administered and evaluated in the same manner as any other educational program. (This appeared to be in harmony with many of the recommendations made by those who have studied athletic programs in the past.)
2. Least support for the accepted guidelines recommended by the majority came most often from male groups that were directly associated with the men's intercollegiate athletic program.
3. A lack of consensus of opinion within the total group was noted in the acceptance of policies for recruitment and financial aid. Particular attention to these areas of controversy seems warranted, particularly in light of the current Title IX guidelines. (18)

The Slatton study, which was administered to all in attendance at the 1975 AIAW Delegate Assembly, provides a consensus of opinion of those in this nation who are currently directly involved in collegiate and university women's athletic programs. Again, the majority of respondents strongly believe in the need for an athletic program which will be organized, controlled, financed, administered and evaluated in the same manner as any other educational program.

Administrators may also wish to obtain the results of the study of the educational, economic, legal, moral, political, and sociological aspects of intercollegiate athletics, which is being sponsored by the American Council on Education. The purposes of this study are to identify problem areas and to recommend ways of alleviating these problems (74).

KEY ISSUES: INPUT

Another problem facing administrators is that while they are usually well-informed and well-briefed on the male athletic program through various sources, they have little knowledge of the state or needs of the female athletic program. The same may be true for physical education. Obviously this situation has been largely created because few women are in decision-making positions. In time, hopefully, this problem will be alleviated; but in the meantime it is essential that those in women's physical education and athletics assist administrators in making crucial decisions by discussing the vital areas of concern and by regularly informing them of problems and progress. This is true in athletics not only at the college and university level but also at the public school level, where school administrators (predominantly male) are vested with the voting power in the state athletic association.

PUTTING PRINCIPLES INTO PRACTICE: RECOMMENDATIONS FOR CONSIDERATION

Unless administrators are informed of the goals, needs and problems of the women's physical education and athletic programs, they cannot be expected to aid in the achievement of equitable programs. Therefore it is essential that:

- Those in women's physical education and athletics be prepared to to state their views on the best direction for the programs and keep administrators well informed of the situation.
- Those in men's athletics be prepared to approach the current economic crisis with possible solutions which could create financially reasonable programs for males and females.

In addition, it is absolutely essential that state legislatures be requested to help resolve this institutional (and national) dilemma by *financially* supporting what courts have affirmed, i.e., that athletics constitute "an integral part of the institution's education program" (53, p. 4). Perhaps, in the long run, this will enable institutions to bring athletics back into a more acceptable perspective, financially and otherwise.

CHAPTER II

How Can I Determine if Equality Exists?

Patricia L. Geadelmann

The following checklist may serve as an assessment tool for determining the status of equality in physical education, recreation and athletic programs and in employment as it relates to these programs. The checklist is an expansion of the issues raised in more abbreviated form by *WomenSports* (122), the ACLU (31) and the Project on the Status and Education of Women of the Association of American Colleges (108). In cases where disparity exists, *whether the deprived sex be male or female,* the institution is practicing a form of discrimination which is illegal. The burden of responsibility for remedying the disparity and eliminating the discrimination is upon the institution.

Although institutions have no legal choice in treating individuals differently on the basis of sex in the areas discussed below, the actual method of treatment for all sexes remains open to the institution. For instance, if it were found that males on a campus were eligible for athletic scholarships and females were not, that institution would have the choice of either providing the scholarships for women as well or not offering athletic scholarships at all. There still rests with the institution the opportunity and responsibility for determining the working philosophy, so long as that philosophy does not differentiate on the basis of sex.

None of the legislation to date speaks directly to administrative structure in physical education and athletics. Hence, an institution could continue to have separate sex departments in these areas as long as the *programs* administered by these departments offer equal opportunities for both men and women and the employment opportunities remain equal for both men and women.

The primary concern is the broad concept of equality of opportunity as opposed to identical opportunities. The broader concept allows institutions flexibility in their approach to programs and ensures the existence of alternatives. There is no force that requires one program to mirror another.

The checklist may be used as an initial consciousness-raiser for members of physical education and athletic departments and school administrations, but its real use extends far beyond that. Answers to questions that are backed with factual evidence constitute cause for filing a complaint or bringing suit. The collection of supporting data for the issues in question is crucial to the successful halt to discriminatory practices.

EMPLOYMENT CONDITIONS

Is the Institution *in Practice* an Equal Opportunity Employer?

1. Are men and women given equal opportunities to apply for open positions?
    a. Is news of vacancies as readily available to both women and men, i.e., are jobs advertised in places where women would have easy access to them as well as in places where men would have such access?
2. Are men and women paid the same salaries for essentially the same work for both teaching and coaching?
3. Do both sexes have equal opportunity to assume coaching or supervision duties (including selling and taking tickets, keeping score, conducting open recreation programs, etc.) for extra pay?
4. Are men and women given the same decision-making power regarding the conduct of physical education and athletic programs?
5. Do men and women in physical education and athletics have comparable teaching loads and/or released time?
6. Are both sexes represented in administrative positions for the programs?
7. Are men and women given similar contracts with regard to length of appointment, fringe benefits, etc.?
8. Are monies for professional travel, coaches clinics, scouting trips, recruitment, etc. distributed equally between men and women?
9. Are secretarial help and clerical assistance available equally to men and women teachers and coaches?
10. Do both sexes have equal opportunities for teaching at preferred hours of the day?
11. Do men and women have equal opportunities to schedule their practice and competitive events at the preferred times?
12. Do both sexes receive the same fringe benefits with regard to insurance, retirement contributions, etc.?
13. Are men and women given comparably sized, located, and equipped offices?
14. Are numbers of men and women distributed equitably throughout the professional ranks?
15. Do both sexes receive promotion and tenure after like years, performances, etc.?

16. Do men and women both have access to the same number of support staff in their positions, e.g., assistant coaches, trainers, information directors, teacher aides, student teachers, graduate assistants, managers, custodial help?
17. Do women and men share equally in the "extra duties" expected of school personnel, e.g., committees, supervision?
18. Are men and women given equal opportunities to assume leadership positions within the department?
19. Do both sexes have equal access to such fringe benefits as coaching or teaching uniforms, use of school owned vehicles, access to recreational facilities, passes to athletic contests, membership in golf and country clubs, discounts on clothing and sporting goods, etc.?
20. Does the institution have an affirmative action plan? Is it available for public examination? Has the institution activated this plan?

PHYSICAL EDUCATION CLASSES

1. Are physical education requirements for graduation the same for boys and girls, men and women?
2. Do both sexes meet the same number of hours per week to receive the same amount of credit?
3. Are all curricular offerings open to students of both sexes?
4. Are students of both sexes encouraged to participate in the entire range of offerings?
5. Are grading standards comparable for male and female students?
6. Where ability grouping is used to divide physical education classes, are both sexes judged objectively and assigned according to skill rather than single sex grouping?
7. Are the sexes treated equally with regard to receiving academic credit for participation in intercollegiate or interscholastic sports?
8. Are students of both sexes subject to the same policies regarding exemptions from physical education?

*9. Are options for fulfilling the physical education requirement equally open to men and women, e.g., testing out, substituting a recreational activity, assisting with a class, independent study?

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*The Project on the Status and Education of Women of the Association of American Colleges (108) points out a potential problem in cases wherein students may be exempted on the basis of a physical fitness test performance. They say, "For reasons of physiology and training it is likely that male students will in general score higher on these tests than female students" (108, p. 5). Title IX does speak to this in 86:34(d). (See discussion on page 41.)

10. Are boys and girls arbitrarily and regularly separated by sex for physical education classes? (Title IX allows separation for contact sports only.)
11. Do both sexes have the same access to highly qualified instructors?
12. Do differences exist in requirements for women and men physical education majors?
13. Is a professional preparation program available in coaching for both men and women? Does the program address itself to the entire range of sports in which men and women compete?
14. Are all facilities shared equally among all students?
15. Is the quality and quantity of equipment available for instruction comparable for students of both sexes?
16. Do both sexes have comparable dress (uniform) requirements for physical education classes?
17. Is the budget for physical education allocated such that students of both sexes benefit equally?
18. Are the policies for obtaining an excuse from physical education class the same and applied equally to males and females?
19. In coeducational classes, do students of both sexes participate fully? Do both sexes have equal opportunities for full participation in game situations?
20. Are custodial services for maintenance, repair, cleanup and setup of equipment and facilities available to serve the male and female programs equally well?
21. Is administrative support given to physical education for both males and females?
22. Is adequate storage available for equipment used by both sexes?
23. Is the same towel service available for all students?
24. Are first aid and medical attention equally accessible for males and females?
25. Are audiovisual equipment and other teaching aides equally available to the programs for both sexes?
26. Do both men and women share in the application for and administration of proposals and programs involving federal and state grants?
27. Are computer and research facilities equally accessible for use by men and women?

RECREATIONAL OPPORTUNITIES

1. Are intramural programs provided for both sexes?

2. Are the intramural programs equally broad in scope for both sexes?
3. Do both sexes have intramural opportunities available at peak interest times?
4. Are qualified officials provided for all students' teams?
5. Are both men and women given opportunities for officiating certification and employment as officials?
6. Are facilities shared equally by teams of both sexes?
7. Are the programs available for both sexes comparable in levels of play offered (lower skilled to highly skilled) and publicity provided (to generate interest and to report games and standings)?
8. Do students of both sexes have equal access to campus facilities for recreational use, e.g., handball courts, swimming pool?
9. Are after-school programs available for both boys and girls in elementary school?
10. Do boys and girls share equally all of the playground areas and equipment during recess?
11. Does the school make its facilities available to community groups which provide equal opportunities for both boys and girls to participate?

ATHLETICS

1. Does the total budget reflect comparable support to both the men's and the women's programs?
2. Do comparable opportunities for sports participation exist for both men and women, i.e., do women have as many different sport offerings as the men? Are there as many teams within each sport for women as there are for men, i.e., freshman, junior varsity, varsity?
3. Do the men's and women's teams have comparable schedules in terms of number of contests and quality of competition?
4. Is the competitive season scheduled at a time that is appealing for both the men's and women's teams, or, for instance, is the girls' basketball season placed in early fall to avoid conflict with the popular winter season for boys' basketball?
5. Are both sexes provided the same quality and quantity of uniforms (home, away, and practice uniforms; shoes; warm-ups; etc.)?
6. Are the quality and quantity of equipment purchased comparable for both teams?
7. Are all facilities shared equally at times convenient and desirable for all?
8. Do both teams use the same kind of transportation for travel? Or,

does one team fly while the other goes by private car? Or are the coaches and physical educators of one sex assigned to drive cars while chauffeured buses are available for the other sex?

9. Is the same insurance coverage provided for male and female athletes?
10. Are funds for both programs supplied from a common source? Or does one program have to raise its own while the other is funded directly?
11. Are there the same provisions for athletic trainers, use of the training room, first-aid supplies, physical examinations, doctors on call, etc. for both men and women?
12. Are athletes of both sexes provided the same special treatment (where such exists) of training table, athletes' housing, tutorial services, spending money, books, etc.?
13. If scholarships are offered by the school, are they available for students of both sexes in equitable amounts in all sports?
14. Are expenses for lodging and meals the same for male and female athletes?
15. Do comparable laundry services exist for both the male and female athletic teams?
16. Are coaching personnel of comparable quality and number for teams of both sexes?
17. Where a single team exists and both sexes may try out, are women actively encouraged to participate? Are women given a fair chance to make and play on the team without ridicule and harassment?
18. Does the school promote the programs of both sexes equally before the public? Are press releases and publicity given equally to both programs? Does the sports or public information office give equal priority to the programs of both sexes?
19. Are practice setups and custodial help for contests available to both programs?
20. Are qualified officials employed to call both the men's and women's contests?
21. Are officials of both sexes and for the contests of both sexes provided comparable pay?
22. Are both sexes given equal opportunities to officiate for contests of teams of the opposite sex?
23. Are audiovisual services (videotape, etc.) equally available for both programs?
24. Is there full administrative support for programs which serve both sexes?
25. Are both men and women reporters given press box and locker

room privileges for after-game interviews, regardless of the sex of the participants in the contest?

26. Are there locker room facilities of similar size and with similar equipment for both men and women, e.g., ample lockers and hanging space, hair dryers, mirrors?
27. Does the school make a regular effort to ascertain students' interests for competitive sports team? Are actions taken to operate according to student interests?
28. Are affirmative or remedial efforts underway to encourage and provide opportunities for students formerly deprived participation?
29. Do the recruitment practices offer the same opportunities and privileges to both sexes, e.g., paid visits to the campus for students, paid recruitment expenses for staff (faculty), visits to the student homes?
30. Are cheerleaders of both sexes, and do they support both the men's and women's teams equally?
31. Are Pep Clubs and Booster Clubs open to members of both sexes and do the clubs equally support the male and female teams?
32. Are funds, released time, transportation, etc., allowed for scouting purposes for male and female teams?

CHAPTER III

What Does The Law Say?

Patricia L. Geadelmann

Introduction

Individuals are protected from discrimination on the basis of sex by a number of federal laws and regulations and by various state laws and regulations. The fact that there are laws on the books, however, has not been a sufficient deterrent to sex discrimination. It has taken repeated efforts on the part of individuals to ensure that the established law becomes a practiced and enforced law. Those efforts continue today, and it will only be through constant monitoring of the actions of employers and decision-makers in the schools that sex discrimination will indeed be eradicated.

The potential legal clout available to an individual is powerful. There is no lack of laws to prohibit sex discrimination. There is, however, a lack of individuals with a knowledge of existing laws and the courage and commitment to see that the spirit of the law becomes a reality. Understanding what the law says provides only partial tooling for an individual wishing to take action. Equally important is an understanding of the structure of the government agencies whose duty it is to enforce the laws.

In the past, the Department of Health, Education, and Welfare (HEW) and the Department of Labor have been particularly criticized for their laxness in enforcing federal regulations prohibiting sex discrimination. In November 1974 a lawsuit was filed in U.S. District Court in Washington, D.C. by the Women's Equity Action League (WEAL) and four other national citizen action groups against HEW and the Department of Labor, charging that the Departments were violating "... anti-sex bias laws by releasing millons of dollars in federal funds to schools engaged in sex discrimination." A court order in 1976 partially resolved the suit, but charges still remain and criticisms continue to be leveled (127).

As an example of enforcement potential, the U.S. Office for Civil Rights issued a warning to 29 universities in the spring of 1975 that up to $65 million in federal contracts would be withheld unless the schools filed acceptable affirmative action plans or agreed to follow a model approved by the agency. There has been considerable speculation that this warning was prompted by the pending lawsuit previously mentioned.

Who has which rights, who enforces which laws, and who can take which recourses should the law not be enforced are all questions to be addressed in this chapter. What will be discussed are the broad concepts of the laws as they apply to situations common in physical education and athletics. Individuals wishing to study the law in greater detail are urged to refer to *A Digest of Federal Laws: Equal Rights for Women in Education* (13) and *A Handbook of State Laws and Policies Affecting Equal Rights for Women in Education* (14).

FEDERAL LAWS AND REGULATIONS

I. Equal Pay Act of 1963 (as amended by the Education Amendments of 1972, Higher Education Act)

Principal Area of Concern: Employment, salaries and fringe benefits

Coverage: *All* employees of employers covered by the minimum wage law. Generally, *everyone* is affected.

Mandate: That persons in jobs requiring equal skill, effort and responsibility under similar working conditions be accorded the same pay

It took from 1945, when an equal pay bill was first introduced, until 1963 to actually enact an equal pay law. The 1963 Act specifically prohibited sex discrimination in salaries but its application was limited in scope. The Education Amendments of 1972 extended the coverage of the Equal Pay Act to include all employees in all public and private educational institutions (from preschool through higher education). The receipt of federal funds is not a factor; all educational institutions are covered.

The definition given "equal" for interpretive purposes of the Equal Pay Act is not that of "same" or "identical;" rather, the phrase "substantially similar" is used. Skill, effort and responsibility are used to evaluate and compare positions and pay. In determining *equal skill*, such factors as experience, training, education and ability are considered. Skill is looked at in terms of what is required to do the job itself. Special skills held by an employee which are not directly required for the job are not considered when an evaluation for equal pay is made. For instance, an individual who was a basketball coach but also happened to be a former All-American football player would not receive more money for coaching than a similarly qualified basketball coach who was not a football star.

Equal effort is measured by the physical or mental exertion needed to perform the job. There is nothing that says the effort must be exerted in the *same* way. Occasional or intermittent extra exertion does not constitute cause for equal work. Thus, a man who might occasionally lift heavy equipment on a job that predominantly requires teaching (or some other duty whose primary function does not require lifting) could not justly be paid more than an otherwise similarly qualified woman.

Equal responsibility is examined in terms of the whole of the position. In jobs that are otherwise equal, a minor degree of difference in responsibility is not just reason for differential pay. A female athletic director responsible for scheduling contests for six sports could not, for instance, be paid less because her male counterpart had seven sports to schedule. Likewise a women's basketball coach could not be paid less than a men's basketball coach simply because the number of games played by their teams was not identical.

The guidelines for the Equal Pay Act specifically prohibit the reduction of the wages of one employee to comply with the law. The wages of the deprived person must be brought up to those of the favored individual. When one examines the great disparities between the coaches for men's and women's athletic teams on college campuses, one cannot help but be awed at the financial implications for institutions should an Equal Pay Act charge be filed and awarded. It is not uncommon for a men's basketball coach at a major institution to receive $25,000+ while the women's counterpart more commonly receives half-time release from her teaching position to coach, receiving a *total* salary of $12,000-$15,000.

A striking example of a successful equal pay charge is seen in a wage-hour case heard in the U.S. District Court of Delaware on July 16, 1974, *Brennan* vs. *Woodbridge School District* (132). The high school was found to be in violation of the Fair Labor Standards Act (which the Equal Pay Act of 1963 amended) by paying a female girls' softball coach less than a male boys' baseball coach. The court found that the amount of practice time, the number of games, the duties of the coaches were "substantially the same" and required "virtually the same skills, effort, and responsibility."

The Equal Pay Act provides that back wages may be recovered for up to two years for a nonwillful violation and for up to three years for a willful violation.

Situations Which Could be Covered by the Equal Pay Act

- A female girls' basketball coach paid $600 while her male counterpart boys' basketball coach is paid $750 on the justification that the girls play 16 games while the boys play 18 games in a season

- A female girls' volleyball coach paid $500 while the boys' football coach is paid $1,000, even though the seasons are the same length, the practices the same length and number, the number of contests the same, and the number of students the same
- A male boys' physical education teacher paid $300 extra for assisting with the setup of heavy equipment even though the female teacher assumes inventory responsibilities for no extra pay

Filing a Complaint

A complaint can be filed by either an individual or an institution by a letter, phone call or visit to the office of the Wage and Hour Division, U.S. Department of Labor. No special forms are required for a complaint. Suits must be filed within two years of the time of the discriminatory act in cases of non-willful discrimination or within three years for willful discrimination. The identity of the complainant is kept in *strict confidence*.[*] The government can conduct periodic reviews without a complaint, and an employer under review may or may not know that a complaint has been filed.

Enforcement

Wage and Hour Division of the U.S. Department of Labor. If the employer fails to comply voluntarily, either the individuals or the Secretary of Labor may file suit.

Although individuals with complaints regarding employment may file under the Executive Order and Title VII as well as the Equal Pay Act, it is the Equal Pay Act whose enforcement procedures are considered most expedient in obtaining a settlement. Individuals should continue to file under all three laws simultaneously, however.

II. Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972)

Principal Area of Concern: Employment

Coverage: All employers of 15 or more employees. This includes public and private, state and local employers, including educational institutions

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[*] Only if the case comes to court will the complainant's name be divulged since court hearings become matters of public record.

Mandate: That there be no discrimination in hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment on the basis of race, color, religion, national origin, or sex

When Title VII of the Civil Rights Act of 1964 was originally passed, educational institutions were exempt. The act was extended in March 1972, however, to include *all* educational institutions, public and private, whether or not they receive federal aid. Although Title VII was originally known most for its application to race discriminations in employment, since 1972 it has been widely used to fight sex discrimination in employment.

Title VII specifically prohibits classification, labeling or advertisement of jobs as being "men's" or "women's." Although there is a bona fide occupational qualification (commonly referred to as BFOQ) exemption, this is very narrowly interpreted.

The burden of proof is on the employer to show just cause for a BFOQ. Allowances have been made to protect the right of privacy. For the hiring of restroom or locker room attendants, for example, sex is considered a BFOQ. Another instance has been with regard to authenticity; actors and actresses fall into this category.

As a federal law, Title VII supersedes any state laws which prohibit or limit the employment of women. Laws enacted by states to limit the weight a woman can lift or the hours a woman can work would be overruled by Title VII.

The only exemptions under Title VII are for religious institutions with respect to the hiring of individuals of a specific religion, religious order or sex.

Situations Covered by Title VII

- A woman denied a job as an umpire because of failure to meet height/ weight requirements
- A woman denied leave of absence for pregnancy
- A female coach whose pay is less than that of a male coach, all other things being equal
- A woman continually passed over in promotion and tenure while the male counterparts are moved rapidly up the ladder
- A woman with superior qualifications denied a job because the institution or department wanted to hire a man.

Filing a Complaint

Complaint forms are available from the EEOC. The time limit for filing is 180 days after the alleged discriminatory act occurred.

Enforcement

EEOC (See Chapter IV for a more complete discussion.)

III. Title IX of the Education Amendments of 1972 (Higher Education Act)

Principal Area of Concern: Sex discrimination against students or employees in educational programs

Coverage: All educational institutions receiving federal funds in the form of grants, loans or contracts

Mandate: "No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education programs or activities receiving federal financial assistance."

Title IX, which parallels Title VI of the Civil Rights Act of 1964, probably has caused more furor in this country than any other piece of legislation in the past decade. While the scope of Title IX is broad, much of the reaction has been centered around the area of athletics. Thus, in response to some of this reaction, former HEW Secretary Caspar Weinberger testified to the House Post-secondary Education Committee, "I had not realized until the comment period that athletics is the single most important thing in the United States." He went on to summarize the intent of Title IX this way, "The goal of the final regulations in the whole area of athletics is to secure equal opportunities for men and women while allowing schools and colleges the flexibility in determining how best to provide such opportunity" (75).

The legal clout of Title IX has been a long time coming, with three years devoted solely to writing the Regulations. The Regulations were finally effective July 21, 1975 after receiving President Ford's approval and surviving a 45-day review period by Congress. During the review period numerous attempts were made to substantially weaken the Regulations, particularly as they applied to athletics. Efforts were made in particular to obtain an exemption for the revenue-producing sports and a removal of the mandate for coed physical education classes. Although all of these and similar attempts to alter the coverage of Title IX have been unsuccessful to date, the threat of future attempts remains. The Regulations are final, but the possibility of amendments to the law itself will always be present, and individuals will need to continue to monitor the introduction of any amendments which would weaken Title IX.

To clarify further the regulations with regard to athletics, in September 1975 HEW issued to all state school officers, superintendents and university presidents, guidelines pertaining to the principal obligations of institutions to provide equal opportunity to both sexes in the operation of athletic programs (interscholastic, intercollegiate, intramural, and club) and in the issuance of athletic scholarships. The basic requirements in these areas are spelled out in sections 86.41 and 86.37(c) of the Regulations.

Institutions may operate separate sex athletic teams when selection for the teams is based upon competitive skill or when the activity involved is a contact sport (86.41 [b]). This section further states "... where a recipient operates or sponsors a team in a particular sport for members of one sex but operates no such team for members of the other sex, and athletic opportunities have for members of that sex previously been limited, members of the excluded sex must be allowed to try-out for the team unless the sport involved is a contact sport."

Although equal aggregate expenditures are not required, equal opportunity is. In the final draft of the Regulations, HEW enumerates the following as considerations for determining equal opportunity:

86.41(c)

(i) whether the selection of sports and levels of competition effectively accommodate the interests and activities of members of both sexes;
(ii) the provision of equipment and supplies;
(iii) scheduling of games and practice time;
(iv) travel and per diem allowance;
(v) opportunity to receive coaching and academic tutoring;
(vi) assignment and compensation of coaches and tutors;
(vii) provision of locker rooms, practice and competitive facilities;
(viii) provision of medical and training facilities and services;
(ix) provision of housing and dining facilities and services;
(x) publicity.

In regard to athletic scholarships, the regulations read:

86:37 (c)

(1) To the extent that a recipient awards athletic scholarship or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the

number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and 86.41 of this part.

Note: The September memo from HEW further clarifies the requirements regarding athletic scholarships. (See Appendix 6)

It is important to note that Title IX applies "...to each segment of the athletic program of a federally assisted educational institution whether or not that segment is the subject of direct financial support through the Department." (See Appendix 6.) This means that whether programs are funded by student fees or university funds, by booster donations or gate receipts, they are subject to coverage under Title IX. The mere fact that the institution receives federal funds in any way makes all of its programs subject to coverage.

The Regulations do not address themselves to administrative structure. There can be separate men's and women's physical education or athletic departments as long as the *programs* of those departments provide for equal opportunity for all students and the employment practices are nondiscriminatory. HEW's September 1975 guidelines speak directly to the administrative structure question:

> changes in current administrative structure(s) or coaching assignments which have a disproportionately adverse effect on the employment opportunities of employees of one sex are prohibited by the regulation.

Hence, a merger which eliminated women staff or reduced their leadership, rank, or coaching opportunities would be disallowed.

On September 30, 1976, Martin Gerry, director of the Office of Civil Rights of HEW, issued a specific ruling that allowed for the continuation of separate men's and women's physical education departments. This ruling came about as a result of a meeting of representatives of NAGWS, AAHPER and several women's groups with Gerry where concerns were expressed about the "submerger" of many women in the process of merging physical education departments. Title IX has frequently been used as a pressure point for combining departments. In the ruling, Gerry warned institutions that do merge to avoid sex discrimination in the process. Of particular concern is the reduction of women in administration positions. If one sex is put at a disadvantage by the merger, the institution must "provide promptly the training and opportunity for experience necessary to qualify these employees for such positions." See Appendix G for entire text of the ruling.

Section 86.34 of the Regulations prohibits the conduction of education programs, activities and classes on the basis of sex; this includes physical education. Separation of the sexes is allowed during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports involving body contact. Additionally, a stipulation in 86.34 (d) provides that "where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect." Thus, grades could not be given to both boys and girls that were a result of a measuring device that enabled boys to score consistently higher than the girls. Separation of the sexes is also allowed for sex education, but not for the entirety of health education.

Elementary schools were allowed one year to comply; by July 21, 1976, they had to correct all instances of discrimination. Secondary schools and colleges are being allowed three years, i.e., until July 21, 1978, to come into full compliance, the extension due largely to athletics and the time it will take to correct all the the disparities. HEW in its September 25, 1975 guidelines stressed, however, that "the adjustment period is *not* a waiting period." Regardless of the level of the institution, a first-year requirement for all is a self-evaluation of the entire educational program. The September guidelines recommended the following for secondary and college institutions:

(1) Compare the requirements of the regulation addressed to nondiscrimination in athletic programs and equal opportunity in the provision of athletic scholarships with current policies and practices;

(2) Determine the interests of both sexes in the sports to be offered by the institution and, where the sport is a contact sport or where participants are selected on the basis of competition, also determine the relative abilities of members of each sex for each sport offered, in order to decide whether to have single sex teams or teams composed of both sexes. (Abilities might be determined through try-outs or by relying upon the knowledge of athletic teaching staff, administrators and athletic conference league representatives.)

(3) Develop a plan to accommodate effectively the interests and abilities of both sexes, which must be fully implemented as expeditiously as possible and in no event later than July 21, 1978. Although the plan need not be submitted to the Office for Civil Rights, institutions should consider publicizing such

plans so as to gain the assistance of students, faculty, etc. in complying with them. (Appendix G)

HEW has urged institutions to use the broadest base of participation possible in determining student interests and abilities. It has further specified in the September guidelines that if opening a team to both sexes in a contact sport does not effectively accommodate interests of both men and women, separate teams must be offered. An institution may offer contact sports on either a separate or unitary basis. The point is clearly made that an institution will not be "effectively accommodating the interests and abilities of women" if it abolishes all women's teams and simply opens men's teams with the result that few women are able to qualify for the men's team.

HEW is not intending to force the development of women's programs in a mirror fashion of men's programs, but rather is encouraging the totality of the athletic programs to reflect an equality of opportunity for male and female students.

The only current exemption allowed from Title IX is in the area of admissions to preschools, elementary and secondary schools (except vocational schools), private undergraduate institutions, and public undergraduate educational institutions traditionally and presently single sex. Regardless of exemptions for admissions, however, all institutions must treat all students nondiscriminatorily once they have admitted members of both sexes.

Although only athletics and physical education have been discussed in this section, Title IX applies to employment, admissions, financial aid, vocational training programs, and all other educational programs as well.

Situations Which Could be Covered by Title IX

Refer to Chapter II, "How Can I Determine If Equality Exists?" Any of the questions listed there represents situations to which Title IX is applicable.

Filing a Complaint

As a result of a court order, new rules aimed at improving the handling of complaints by HEW went into effect October 1, 1976. The court order provides a format for filing complaints and sets a limit of 210 days for HEW to settle the case. Persons filing a complaint must be sure that *all* of the following is included, or HEW can delay investigation until all information is provided:

a. Name and address of person(s) or group filing the complaint
b. Who (what person or group) has suffered discrimination
c. Names and addresses if there are three or fewer victims of discrimination
d. Name and address of the school district or other institution charged with discrimination
e. When the discrimination occurred
f. A description of the discriminatory act(s)
g. Initial complaints must be filed within 180 days of the act of discrimination.

An individual filing a complaint has the right to request information about the progress of the case. Additional information can also be supplied during the investigation.

Enforcement

HEW Office of Civil Rights

IV. Executive Order 11246 (as amended by 11375)

Principal Area of Concern: Employment
Coverage: All employers and institutions with federal contracts (grants) in excess of $10,000
Mandate: That contractors (institutions) not discriminate against any employee or applicant because of race, color, religion, sex, or national origin

Executive Order 11246 was issued by President Lyndon B. Johnson on September 24, 1965 to ensure that there be equal employment opportunity in government, by federal contractors and subcontractors, and under federally assisted construction contracts. Sex, however, was not included; therefore, on October 13, 1967, President Johnson issued Executive Order 11375 as an amendment to Executive Order 11246 to include sex as a criteria for equal employment opportunity.

Contractors (those receiving federal monies) are ordered to take affirmative efforts. Those institutions receiving over $50,000 in federal funds or those employing 50 or more employees are required to file written affirmative action plans which include numerical goals, timetables for recruiting, hiring, training and upgrading minorities and women. (See Chapter VIII for a discussion of affirmative action plans.) In any advertisement for employees, the contractor must specifically state that all qualified applicants will be considered without regard to race, color, religion, sex or national origin. For purposes of affirmative action, employers are required to follow specified recruiting and hiring practices. Advertisements must appear in appropriate journals and efforts must be taken to seek out potentially qualified minorities and women whether they be employed in a similar position or not.

For persons already employed, contractors are required to provide remedial job training and work-study programs to help employees improve skills in order to have an equal opportunity for promotion. Work assignments cannot be classified by sex, nor can dining halls, lounges or faculty clubs make a sex differentiation. *All* females are eligible for a pregnancy leave regardless of their marital status or of the contractors' specific provisions for granting leaves. Further, females may not be penalized by loss of pay or benefits upon return from pregnancy leave. If the employer permits personal leaves, any leaves for child care must be available to both women and men.

In addition, any tests used by employers, be they performance or pencil and paper, must be validated by strict scientific standards to show that they are both predictive of job performance and nondiscriminatory in nature. Lack of facilities may not be used as an excuse for not hiring women.

Situations Covered by Executive Order 11246 as Amended by Executive Order 11375

- A woman (or man) denied a job in a previously single-sex department of the opposite sex on the basis of a lack of restroom or shower facilities
- A woman denied a coaching job of a team of the opposite sex because of a lack of dressing or office facilities for her
- A woman refused her job upon return from pregnancy
- Male teachers in a school system automatically given an extra stipend as "head of the household" (whether they are given extra duties to earn the stipend or not)
- Teachers of one sex systematically assigned to a particular kind of duty (i.e., women sell tickets while men patrol the halls)
- A college placement service which carries separate male and female listings

Filing a Complaint

Complaints may be made in letter form to the OFCC or HEW. Either individuals or organizations may register the complaint within a time limit of 180 days from the last alleged discriminatory act. The government can, however, conduct an investigation without first having a complaint registered (this is different from Title VII). The individual complainant's name is usually given to the institution, but again, the institution is prohibited from harassing the individual in any way. Findings of an investigation are kept confidential by the government, but the institution is free to make them public.

Enforcement

Office of Federal Contract Compliance (OFCC) of the Department of Labor—Office of Civil Rights (Division of Higher Education) of HEW.

The enforcement power is that of delaying new contracts, revoking current contracts or prohibiting future contracts.

Special Note: The Executive Order is not an actual law, but rather a series of rules and regulations that the federal government has required contractors to follow if they wish to receive federal monies.

V. Title VII (Section 799 A) and Title VIII (Section 845) of the Public Health Service Act (as amended by the Comprehensive Health Manpower Act and the Nurse Training Amendments Act of 1971)

Principal Area of Concern: Admission of students and employment in health services programs

Coverage: All institutions receiving or benefiting from a grant, loan guarantee or interest subsidy to health personnel training programs or receiving a contract under Title VII or VIII of the Public Health Service Act

Mandate: That there be nondiscrimination in admission to training programs and nondiscrimination in every aspect and phase of the program for both students and employees

This is probably one of the less widely known laws which addresses sex discrimination, albeit for a very specific kind of program, that of health services. Included in the coverage are schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, allied public health personnel, and nursing. It is conceivable that the preparation of sports medicine specialists and athletic trainers would be in a department that receives federal assistance under this Act, and these are areas in which women typically have been denied opportunities in the past.

The significance of this legislation is in its application to the students in these programs. Only Title IX of the Education Amendments (discussed in the next section) further addresses itself to students and their rights to equal opportunities without regard to sex.

Situations Which Could be Covered by Titles VII and VIII (One must first establish that the program under consideration is covered by this Act.)

- Different admission standards for males and females wishing to enter a sports medicine or athletic training program
- Assignment of intern opportunities on the basis of sex, e.g., males to the football team, females to the women's basketball team
- Exclusive employment of one sex as instructors for a program

Filing a Complaint

Within 180 days of the time of the discrimination, an individual or an organization may file a letter of complaint with HEW. Government investigations can be conducted as a matter of routine without a formal complaint, in addition to in response to a complaint. The identity of complainants is kept confidential.

Enforcement

HEW Office of Civil Rights. Current awards may be revoked and new awards delayed or prohibited for failure to comply. The Department of Justice may file suit at the request of HEW.

VI. The Equal Rights Amendment

The Equal Rights Amendment, commonly referred to as the ERA, has been proposed by Congress as the 27th Amendment of the U.S. Constitution. At the time of this writing, 35 of the required 38 states have ratified the amendment. Two years after the 38th state has approved the amendment, it will be in effect.

The proposed amendment reads very simply:

> Equality of rights under the Law shall not be denied or abridged by the United States or any State on account of sex.

Principal Area of Concern: Sex discrimination in any form

Coverage: ". . .the Amendment requires that the *federal government* and all *state and local governments* treat each person, male and female, as an individual . . . . The Amendment applies

> *only to governmental* action; it does not affect private action on the purely social relationships between men and women. . . ." (U.S. Cong., Senate Judiciary Committee Report on the Equal Rights Amendment, Report 92-689, 92nd Cong., 2d Sess., p. 11, March 1972.) [Italics added.] (4, pp. 3-4)
>
> *Mandate:* That all governments, local, state and federal, treat each person, whether male or female, as an individual

Although there has been some attempt by states that have already ratified the ERA to rescind their action, it appears that such efforts will not be valid. The Counsel to the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee has stated:

> Judicial opinions and, more importantly, the precedents established by the Congress itself make it clear that once a State has ratified an amendment, it has exhausted the only power conferred on it by Article V of the Constitution, and may not, therefore validly rescind such action. (4, p. 3)

There has been a great deal of controversy about what the ERA will and will not do. The Iowa Women's Political Caucus (82) has prepared a fact sheet on the ERA in which it cites several laws and practices of the state and federal government which restrict females. Among them are:

- employment laws barring women from certain occupations, working certain hours or lifting certain weights
- laws requiring married females to obtain court approval to engage in business
- different ages for males and females in child labor laws, age for marriage, and juvenile court jurisdiction

Under the ERA, laws which are beneficial will be extended to both sexes. Hence, state laws would have to provide for the possibility of alimony payments to both males and females. Restrictive laws will be unconstitutional. The removal of restrictive laws will *not* mean that women will be *required* to do anything now done by men; it simply means that if a woman *chooses* to perform some act (e.g., lift 100 pounds) she may do so and may compete for a job requiring that skill.

The ERA *will not* affect private decisions or life-styles. Women will not be forced into the paid labor market; they may remain in the homemaker role if they so choose. There is no longer a draft, but the ERA would eliminate exemptions purely on the basis of sex. Either males or females could get an exemption based on having dependent children. No person will be required to do any task for which he or she is physically unsuited.

Individuals desiring more detailed information on the projected implications of the ERA are referred to the following sources (35, 39, 40, 41, 151).

The Project on the Status and Education of Women of the Association of American Colleges has summarized the effects of the ERA on educational institutions this way:

> With respect to education, the Equal Rights Amendment will require that State supported schools at all levels eliminate laws or regulations or official practices which exclude women or limit their numbers. The Amendment would not require quotas for men and women, nor would it require that schools accurately reflect the sex distribution in the population; rather admission would turn on the basis of ability or other relevant characteristics, and not on the basis of sex. A similar result may be expected with respect to the distribution of scholarship funds. State schools and colleges currently limited to one sex would have to allow both sexes to attend. Employment and promotion in public schools would, as in the case of other governmental action, have to be free from sex discrimination.
>
> It should also be noted with respect to education that the Amendment would not require that dormitories or bathrooms be shared by men and women. As explained above, the Amendment does not prohibit the separation of the sexes where the right of privacy is involved. As the Association of the Bar of the City of New York pointed out in its report, "the constitutional right of privacy could be used to sanction separate male and female facilities for activities which involve disrobing, sleeping and personal bodily functions."
>
> The Amendment would not affect private education. (100)

As we look specifically to the application of the ERA toward athletic programs we can see some rather far-reaching effects. A comment in the *Syracuse Law Reviews* (113) notes that the passage of the ERA "would have the advantages of uniformity, expediency and full equality" (113, p. 569). The article goes on to say, however, that "...the amendment as proposed lends itself to an interpretation which would have an adverse effect on the majority of female athletes" (113, p. 569). Commentators on the ERA cited in this article all agree that the ERA

> ...constitutes an unqualified prohibition. It means that differentiation on account of sex is totally precluded, regardless of whether

> a legislature or administrative agency may consider such a classification to be "reasonable," to be beneficial rather than "invidious," or to be justified by "compelling reasons." Furthermore, . . . the clause would not sanction "separate but equal" treatment. Power to deny equality of rights on account of sex is wholly foreclosed. (113, p. 571)

According to this interpretation all athletic teams would be open to both boys and girls, men and women. A decision has already been rendered by the Commonwealth Court of Pennsylvania under the state's ERA which has mandated mixed competition in all sports. (See Chapter V.)

There would be three allowable exceptions to absolute equality under the ERA which would permit differential treatment on the basis of sex, but none is applicable to athletics:

1. Power of the State to regulate cohabitation and sexual activity between unmarried persons
2. Separate treatment in order to protect fundamental rights of privacy (separate showers, lockers, and toilet facilities are allowed)
3. A characteristic unique to one sex is sufficient grounds for dissimilar treatment, but athletic ability is not unique to one sex. Even though the majority of the men may be superior to the women in a particular activity, there will be *some* women who are superior. (113, pp. 573–574)

The most desirable means of providing equal opportunities for women in sports and of creating equitable programs are yet to be determined. The passage of the ERA, however, may have a far-reaching impact on all courses of action to date.

VII. Women's Educational Equity Act of 1973 H.R. 208

Whereas all of the legislation discussed thus far has been "prohibitive" in nature, i.e., written to prohibit sex discrimination in one form or another, the Women's Educational Equity Act of 1973 represents a permissive piece of legislation. The purpose of the Act is to provide for positive programs to promote the education of women. Congress approved funding for this in September 1975 as part of the appropriations for the Education Act. Procedures for project application are printed in the *Federal Register.*

The House Subcommittee on Equal Opportunities has made available to the Project on the Status and Education of Women a section-by-section analysis of the Women's Educational Equity Act. That analysis is reprinted here:

SECTION 1. States the title of the act as "Women's Educational Equity Act of 1973."

SECTION 2. Declares present educational programs inequitable as they relate to women of all cultural and ethnic groups. States the purposes of the act, which include encouraging the development of new and improved curriculums; demonstration and evaluation of such curriculums in model educational programs; support of the initiation and maintenance of programs concerning women at all levels of education; dissemination of materials for use in educational programs and in mass media; provision of training programs for parents, educational personnel, youth and guidance counselors; community leaders, and government employees at all levels; provision of planning for women's resource centers; provision of improved career, vocational and physical education programs; provision of community education programs and programs on the status, roles and opportunities for women in society.

States that men are not prohibited from participating in any activities funded under this act. (109)

Individuals are encouraged to maximize the possibilities and opportunities provided by this Act to further the growth of women.

In September 1976 the first grants under this program were awarded. A total of 66 grants shared the $6.2 million available in federal funds. Over 1,200 applications had been submitted. The majority of the funds will be directed in three areas: training materials on sex bias in education, equality for women in educational leadership, and ending sex stereotypes in career-oriented education. Most of the materials developed will be aimed at elementary and secondary schools. A project in Colorado will be instituting a statewide communication network to promote sports equally for girls. Another project will result in a series of regional and national workshops to help educators comply with Title IX.

Funding for 1977 will feature a $1 million increase. More information about the Women's Educational Equity Act program can be obtained from Joan Duval, Director, Women's Program Staff, U.S. Office of Education, Room 3121, 400 Maryland Ave., S.W., Washington, DC 20201.

STATE LAWS AND REGULATIONS

Within the various states are labor laws, fair employment practices legislation, equal rights amendments, elementary and secondary school education policies, state anti-discrimination agencies, and State Commissions on the Status of Women. These laws and agencies are variously distributed and variously constituted. An exhaustive study of this distribution is not within the purview of this publication, but interested persons are urged to consult the report of the Education Commission of States (14) to find state by state details. Appendix C contains a summary of anti-discrimination laws in each state.

It behooves each individual to know present and pending legislation and policies affecting equal opportunities for persons of both sexes. State statutes are perhaps more easily monitored and influenced than federal legislation because of the potentially closer relationship between legislators and their constituencies. In many cases, states still carry laws on the books that have become invalid because of federal legislation, e.g., Title VII of the Civil Rights Act of 1964 supersedes any state laws which distinguish between men and women for pay scales, for job opportunities or for fringe benefits.

Elementary and secondary school education policies are a key area of concern. Once again there are differences in structure and jurisdiction by state. Knowing whether the legislature has the statutory power to determine educational policies or whether the regulations are established by a state board of education or state department of public instruction is essential to plan for means of effecting change.

A further determination to be made within each state is the relationship between the high school athletic association and the State Department of Public Instruction. Focal points of interest in assessing the status of equal opportunity include laws, policies, regulations or recommendations, and such matters as physical education requirements and exemptions, athletic opportunities and participation, and coaching qualifications and assignments.

There are three principal types of high school athletic associations, each with unique channels through which one must work to determine or change policy. Most common is the voluntary association whereby both private and public high schools exercise an option to join an essentially independent association. Such membership ultimately means that most of the individual power to make regulations is relinquished to the power of the association as a whole. Voluntary associations have no direct relationship to the state government or state board of education, but a representative of the state board of education often sits as an ex-officio member of the athletic association board. There are state associations which are departments or sections of the state board of education itself. Michigan and New York have been cited as classic examples of these types of associations (16). The third and least common type of association is that directed by a state university. Texas, Virginia and South Carolina are examples of this organizational structure.

Each type of association, however, is in effect serving a state function and therefore is subject to the constitutional law of the state and federal governments. The two court decisions most frequently cited to support the classification of state athletic associations as agents of the state acting "under color of state law" are *Oklahoma High School Association* vs. *Bray*, 321 F2d 269 (10th circuit 1963), and *Louisiana High School Athletic Association* vs. *St. Augustine High School*, 396 F.2d 224 (1968).

In the Louisiana case, the court used the following rationale to declare the conduct of the Louisiana High School Athletic Association state action:

> Membership of the Association is relevant—85 per cent of the members are state public schools. The public school principals, who nominally are members, are state officers, state paid and state supervised .... Funds for support of the Association come partly from membership dues, largely from gate receipts from games between members, the great majority of which are held in state-owned and state-supplied facilities ....
>
> The power of the Association reaches not only to the stadiums, the gymnasiums and the locker rooms but into the public classrooms, the public principals' offices and the public pocketbook. It exercises control over curricula—a coach must teach a designated minimum number of classes per week. Principals are required to submit certain reports to the Association .... (140, p. 227)

Though member schools are obligated to follow the rules and regulations of the state athletic association, they are not absolved from responsibility to provide equal educational opportunities consistent with the law of the land. The legally protected rights of individuals take clear precedence over any policy or regulation of an athletic association. In Chapter V a number of court cases brought against high school athletic associations are discussed. A common type of case is that brought against an athletic association by an individual girl denied participation on her school's boys' team (where no girls' team existed) because of an athletic association policy. The courts have ruled consistently that females cannot be denied an opportunity to participate in athletics when such exists for the boys.

Even the National Collegiate Athletic Association (NCAA) has been declared by the courts to be acting "under the color of state law." In *Parish* vs. *National Collegiate Athletic Association*, 506 F.2d 1028 (1975), the circuit court stated:

> We see no reason to enumerate again the contacts and the degree of participation of the various states through their colleges and

> universities with the NCAA. Suffice it to say that state-supported educational institutions and their member officers play a substantial, although admittedly not pervasive, role in the NCAA's program .... Moreover, we cannot ignore the states'—as well as the federal government's—traditional interest in all aspects of this country's educational system. Organized athletics play a large role in higher education, and improved means of transportation have made it possible for any college, no matter what its location, to compete athletically with other colleges throughout the country. Hence, meaningful regulation of this aspect of education is now beyond the effective reach of any one state. In a real sense, then, the NCAA ... is performing a traditional governmental function .... We have little doubt, in light of the national (and even international) scope of collegiate athletics and the traditional governmental concern with the educational system, that were the NCAA to disappear tomorrow, government would soon step in to fill the void. (146, pp. 1032-1033)

Although there has been no court case to date, one could expect a similar decision regarding the AIAW.

An individual, then, with a complaint involving an action of a particular school, be it high school or college, can eventually call upon the jurisdiction of the federal courts if no resolution of the problem is possible by working through the school or athletic association itself.

State laws regarding physical education requirements vary considerably. These laws or the administration of them cannot differentiate on the basis of sex. Title IX is the source of this mandate (federal law supersedes state law). It was concluded that ". . . a student has an enforceable right to obtain a physical education program within the state provided facility" (62, p. 287). Such would be considered a part of the regular educational obligations of the school to the student. The right to participate in athletics, however, has not been similarly recognized. (See 145.)

The jurisdiction and enforcement power of such state agencies as the Attorney General's Office, the Civil Rights Commission, and the Commission on the Status of Women all differ from state to state depending upon the dictate of the statutes. A contact with any of these state agencies with regard to the resolution of problems of sex discrimination would result in a proper referral if that particular agency had no jurisdiction for that area.

Some states have initiated anti-sex discrimination legislation on their own. The first of such was signed into law on August 5, 1971 by the governor of Massachusetts (38, p. 36). Other states have policies set by state boards of education which carry the same anti-sex discrimination mandates. The Minnesota State Board of Education, which has been particularly progressive in this area, issued in 1972 a policy statement, "Eliminating Sex Bias in Education," dealing with sex stereotyping in instructional materials, teacher training and inservice programs. The board also adopted a position paper on expanding career and vocational training across traditional sex lines, and in 1974 it adopted a regulation that will result in the removal of state aid from any school failing to provide courses and activities to students of both sexes (14, p. 51).

The piece of state legislation that could have the most profound effect upon the elimination of sex discrimination is a state equal rights amendment. Most of the state equal rights amendments are modeled on the proposed national Equal Rights Amendment. Fifteen states have passed their own equal rights amendments at the time of this writing (Alaska, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Montana, New Mexico, Pennsylvania, Texas, Utah, Virginia, Washington and Wyoming). Although most of the equal rights amendments have been passed very recently, Wyoming and Utah included an equal rights amendment in their original state constitutions. There has been relatively little litigation based on these laws to date, some 40 cases in the 15 states combined.

The majority of these cases has been in the domestic relations area. Many were brought by men to challenge presumptions that favor women in the awarding of child custody, child support and alimony. The second large area of litigation has been the criminal area. Suits have challenged statutory sex differentials in sentences and sentencing procedures, in prison facilities, and in the cutoff age for juveniles. For a comprehensive listing of state ERA cases, see *Women Law Reporter*, November 15, 1974.*

The possibilities remain tremendous and the implications profound. A striking example of the potential ramifications is seen in the case *Commonwealth of Pennsylvania* vs. *Pennsylvania Interscholastic Athletic Association*, Pa. Commonwealth, 334 A 2d 839. The case was decided March 19, 1975, and the decision far exceeded the bounds of any athletic case to date as well as the provisions of Title IX by extending coed competition to contact sports.

While Title IX is subject to future amendments which could substantially weaken its application to the provision of sports opportunities for girls and women, a state ERA guarantees equal opportunities and within that state would prevail over the application of Title IX in

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*Copies may be obtained from *Women Law Reporter*, 5141 Massachusetts Avenue, N.W., Washington, DC 20016. Phone number is (202) 229-2922.

instances in which the provisions of Title IX allowed disparate treatment.

State ERAs cover only "state action" and do not extend to private discrimination. Athletics at public schools and universities would be covered, as noted in the previous discussion on athletic associations.

Although the Supreme Court has yet to declare sex a "suspect classification" under the Equal Protection Clause of the Fourteenth Amendment, there is precedent at the state level for such a declaration. In 1971 the California State Supreme Court ruled in *Sail'er Inn, Inc.* vs. *Kirby* (116, 158), a case challenging the state's exclusion of women from bartending, that sex was an unlawful basis for classification. (See Chapter V, page 67 for further discussion.) The California Court based its decision on the California Constitution (with its State ERA), Title VII, and the Equal Protection Clause of the Fourteenth Amendment. Further litigation under State ERAs could well result in further findings of sex as a "suspect classification."

CHAPTER IV

Compliance Agencies

Yvonne Slatton

The effectiveness of laws prohibiting discrimination will be only as good as the agencies enforcing them. If progress is to be made in ending discrimination, one must be aware of the designated enforcement agencies as well as the laws. As a result of the various laws, regulations and executive orders, all three branches of the federal government have become involved in efforts to overcome discrimination.

1. *Executive*—through the establishment of the Office of Federal Contract Compliance and the Department of Health, Education and Welfare
2. *Legislative*—through the passage of acts prohibiting discrimination in employment, program access, etc., and the establishment of the Equal Employment Opportunity Commission
3. *Judicial*—through classic decisions which have had an impact on the problems for the various classes as well as for individuals

The *Federal Register*, published daily, makes available to the public, federal agency regulations and other legal documents of the executive branch. Here, government requirements are published which involve environmental protection, consumer product safety, food and drug standards, occupational health and safety, education opportunity and many more areas of concern to the public. Perhaps more important, the *Federal Register* includes *proposed* changes in regulated areas. Each proposed change published carries an invitation for any citizen or group to participate in the consideration of the proposed regulation through submission of written data, views or arguments and sometimes by oral presentation. Through the publication of proposed rules and notice of public meetings, citizens are offered a significant opportunity to be informed of and to participate in the workings of their government. The *Federal Register* is available through individual subscription or through most public and education libraries. Every educator should attempt to stay informed of current requirements affecting education programs.

Discrimination in educational institutions is approached in two ways: through leverage of federal financial assistance, since under Titles VI and IV schools and colleges could not receive such assistance unless they ended discriminatory practices, and through litigation by the Department of Justice. Under Title IV of the Civil Rights Act of 1964, the Attorney General is authorized to bring lawsuits to eliminate unconstitutional discrimination by public schools and colleges. Thus, even if schools are willing to forego federal financial assistance as the price of continuing discriminatory practices, they face the prospect of litigation by the Department of Justice to require an end to discrimination.

The discussion which follows is an attempt to acquaint the reader with the agencies of the federal government directly involved with implementing legislative acts to end discrimination. In many instances, complaints will cut across the jurisdiction lines of several agencies, and therefore, it is often recommended that *complaints be filed with more than one agency*. The agencies, through their interagency communication system, will then decide which one should handle a particular case. For further information on government agencies and their responsibilities, the reader is encouraged to write for the pamphlets, brochures and packets listed in the references, pages 197–201. Generally, the information is sent free or at minimal cost and is very informative. Some of the information may be secured in bulk orders and therefore can be easily distributed throughout school districts.

A. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

HEW is the cabinet-level department of the federal executive branch most concerned and involved with the nation's human concerns. It was created on April 11, 1953 under legislation proposed by President Eisenhower and approved by Congress. The Secretary of HEW supervises and directs the Department's activities and administers the function of such specialized units as the Office of Civil Rights, the Office of Child Development and the Office of Consumer Affairs. The Secretary is aided in the overall management responsibilities by an Undersecretary, eight Assistant Secretaries, a General Counsel, and the agency heads.

Since the Secretary is accountable to Congress and the public for the way the Department spends taxpayers' money, the Secretary and the top staff spend considerable time testifying before Congressional committees, meeting with members of Congress, speaking before national organizations, and meeting with the press and public to explain HEW actions. They also prepare special reports on national problems which are available to the public through the Government Printing Office.

In terms of the amount of financial assistance under federal grant and loan programs, HEW is the major agency responsible for Title VI. It administers three of the largest federal grant programs in public assistance (welfare), aid to education, and public health research and services.

Office for Civil Rights

The Office for Civil Rights in the Department of HEW is responsible for administering and enforcing departmental policies under Titles VI and VII of the Civil Rights Act of 1964 which prohibits discrimination with regard to race, color or national origin in programs and activities receiving federal financial assistance. The Office is also responsible for Title IX of the Education Amendments of 1972, which prohibits discrimination against students or others on the basis of sex, and for Executive Order 11246, as amended by Executive Order 11375, which prohibits discrimination with regard to race, religion, color, sex or national origin by employers holding federal contracts.

Negotiation and Enforcement

If a school, hospital, state agency or other facility subject to Titles VII or IX fails to eliminate discrimination voluntarily, staff members of the Office for Civil Rights will meet with officials to see what can be done to eliminate discriminatory practices. If efforts to achieve voluntary compliance fail, the Office can initiate administrative enforcement proceedings to terminate federal assistance or can request the U. S. Department of Justice to take legal action. The law requires that the attempts to achieve voluntary compliance must be exhausted before formal enforcement actions are invoked.

The Department has developed procedures to give recipients and complainants every opportunity for a full hearing before a federal administrative law judge so that each side can present its case. During the hearing process, a recipient continues to receive federal money for ongoing programs previously approved and funded. However, federal funds for new programs cannot be approved. After the administrative law judge makes a decision, it may be appealed to a five-member reviewing authority. If the institution is finally ruled out of compliance, the Secretary transmits the decision to the committees of the House and Senate with legislative jurisdiction. The termination of funds takes place 30 days later. Of course, a later appeal through the federal courts may be made.

Any institution that has its funds terminated may participate once again in federal programs by eliminating discriminatory practices.

Similar procedures are used under the Executive Order covering federal contracts. If a hearing supports a finding of noncompliance, existing contracts are terminated and the contractor is barred from future contract awards until the discrimination has been corrected.

Handling of Complaints

Any person who has a complaint that discrimination because of race, color, sex or national origin exists in any program aided by HEW should notify the Office for Civil Rights. This pertains also to discrimination because of a physical or mental handicap. Similarly, any person who has a complaint that discrimination because of sex exists in any education program or in admission to any health training program benefiting from federal assistance should notify the Office for Civil Rights. Also, this Office should be notified of employment discrimination, based on race, color, religion, sex or national origin, by federal contractors and subcontractors and on federally assisted construction projects.

A complaint may be filed by letter, by telephone or in person at the Office for Civil Rights in Washington, D.C. or at its regional offices. These offices are located in HEW's regional offices in the following cities: Boston, New York City, Philadelphia, Atlanta, Chicago, Dallas, Kansas City (Missouri), Denver, San Francisco and Seattle. The addresses and telephone numbers are listed in Appendix F. Personnel in some regional offices are bilingual and can give special help to members of national origin minorities.

B. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The Commission was created by Title VII of the Civil Rights Act of 1964 and became operational July 2, 1965. Title VII was amended by the Equal Employment Opportunity Act of 1972. EEOC, which is the national counterpart to state and local fair employment practice commissions, receives and investigates changes of employment discrimination. Its purposes are to end discrimination based on race, color, religion, sex or national origin in matters regarding hiring, promoting, firing, wages, testing, training, apprenticeship, and all other conditions of employment; and to promote voluntary action programs by employers, unions and community organizations to put equal employment opportunity into actual operation.

The Commission's operations are decentralized to the five litigation centers and to the eight regional offices and their district offices. (See Appendix E.) The EEOC has five commissioners, one designated by the President as chairperson and one as vice-chairperson. There must be at least two commissioners from each political party.

In addition to the litigation centers and regional offices, the Commission has designated agencies known as 706 Agencies to assist in handling individual complaints. The designated 706 Agencies are:

1. Alaska Commission for Human Rights.
2. Colorado Civil Rights Commission
3. Connecticut Commission on Human Rights and Opportunities
4. Delaware Department of Labor
5. District of Columbia Office of Human Rights
6. Illinois Fair Employment Practices Commission
7. Indiana Civil Rights Commission Rights
8. Michigan Civil Rights Commission
9. Minnesota Department of Human Rights
10. New Hampshire Commission for Human Rights
11. New Jersey Division on Civil Rights, Department of Law and Public Safety
12. Oregon Bureau of Labor
13. Pennsylvania Human Relations Commission
14. South Dakota Human Relations Commission
15. Utah Industrial Commission
16. West Virginia Human Rights Commission

Additions to this list are made by the Commission from time to time and are published in the *Federal Register*.

EEOC is granted no power to require a discriminatory party to cease engaging in prohibited activities. Lawsuits, however, may be brought by private parties, by the Department of Justice or by the EEOC.

How to File a Complaint

If a person believes that he or she is a victim of discrimination by an employer, labor organization, employment agency, or joint labor-management program for apprenticeship or training, that person may file a complaint with the Commission. Instructions and complaint forms are available at the Equal Opportunity Commission, 1800 G Street N.W., Washington, DC 20506; at local or state Fair Employment

Practices agencies; or at the regional EEOC offices. (See Appendix D for sample form.)

The following directions are taken from the official charge form:

- *It is important to file your charge as soon as possible after the discrimination took place.* To be sure your rights are protected, you should file no later than 90 days after the incident complained of. If you file later than that, the Commission may not be able to help you.
- When the Commission receives the charge, a representative will review the facts and contact you either by mail or in person.
- If your charge is one which can be handled by the Commission, an investigator will gather all the facts in the situation from you and from the parties you have charged with discrimination.
- *A copy of your charge will be given to the parties you have charged with discrimination. This is required by law.*
- If the Commission does not find that the facts support your charge, you will be notified that the charge has been dismissed. The parties you have charged with the discrimination will also be notified.
- If the Commission finds reasonable cause to believe that you have been discriminated against, it will attempt to conciliate and reach an agreement satisfactory to you and the company (or union, employment agency or apprenticeship committee).
- If it fails to reach such an agreement within a specified period of time, you have the right to take your complaint to court.
- If you live in a state which has an enforceable fair employment practice law, and the means to enforce it, the Commission will defer your case to the State agency for a period of at least 60 days. You will be notified if this is done. Unless the Commission is notified to the contrary on the termination of State proceedings, or after 60 days have passed, whichever comes first, the EEOC will assume you want the case handled by EEOC and will consider the charge to be filed with the Commission and begin processing the case. About 85 percent of deferred cases return to EEOC for processing after deferral.

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The Commission has determined that it will defer to the following jurisdictions:

- Alaska
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Missouri
- Nebraska
- Nevada
- New Jersey
- New Mexico
- New York
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Puerto Rico
- Rhode Island
- Utah
- Washington
- West Virginia
- Wisconsin
- Wyoming

On cases involving sex discrimination, the Commission defers to the following:

- Colorado
- Connecticut
- District of Columbia
- Hawaii
- Maryland
- Massachusetts
- Michigan
- Missouri
- Nebraska
- Nevada
- New York
- Utah
- Wisconsin
- Wyoming

The Commission does not defer to Idaho, Maine, Montana and Vermont. These states provide criminal sections for discrimination, but do not establish or authorize a state agency to administer the statute. Nor does the Commission defer to Arizona, Oklahoma and Tennessee. These outlaw discrimination or declare it contrary to state policy, but do not provide for effective enforcement.

Because of an ambiguity in the law as it relates to public institutions, it is not yet clear whether EEOC *or* the Attorney General will file suit in all situations which involve public institutions. Individual commissioners may initiate complaints if they receive information which indicates that the law has been violated. In certain cases, where the Commission feels that a pattern or practice of discrimination exists rather than a single instance, the Justice Department will be advised and the Attorney General may then undertake action in the U.S. District Court.

C. OFFICE OF FEDERAL CONTRACT COMPLIANCE

The OFCC was created under authority of Executive Order 11246, issued September 24, 1965. As a part of the Labor Department's Wage and Labor Standards Administration, OFCC administers the government's program for ensuring equal employment opportunity among federal contractors and/or federally assisted construction projects. HEW has been designated by OFCC as the Compliance Agency responsible for enforcement of the Executive Order for all contracts with universities and colleges. Therefore, the investigations are conducted by the Office for Civil Rights of HEW.

Who Can File a Complaint?

Any individual or group can file by describing the discrimination. To facilitate the exchange of information in the equal opportunity field and to reduce duplication of compliance activities, OFCC signed a memorandum of understanding with EEOC so that compliance reviews are coordinated between the two agencies and information on contractors is exchanged. OFCC handles the broad, company-wide compliance reviews and EEOC handles complaints of discrimination filed by individuals. Individual complaints can be filed on the prescribed form or by writing a letter to OFCC.

Pattern complaints are those which reflect a practice of discrimination throughout the system whereby numbers of individuals, not necessarily in the same job or area of specialization, are victims of discrimination. It may be something which has evolved and been perpetuated over a number of years. There are no official forms for pattern complaints. Complaints can be filed with the Secretary of Labor or the Secretary of HEW in Washington, D.C. Regardless of where the complaint has been filed, HEW does the investigations. Complainants *do not* need to know what contract (s) an institution has or is negotiating for in order to file.

U.S. DEPARTMENT OF LABOR—WAGE AND HOUR DIVISION OF THE EMPLOYMENT STANDARDS ADMINISTRATION

The Division enforces the Fair Labor Standards Act including the equal pay provisions. It is empowered to make routine, general investigations of establishments to ensure compliance with the act, regardless of whether a specific complaint is received. *Complaints are treated confidentially.* The Administrator of the Division may supervise payment of back wages, and in certain circumstances, the Secretary of Labor may bring suit for back pay *or* the employee may sue for back pay.

There is no formal procedure for filing a complaint. Complaints may be reported to the nearest Wage and Hour Office of the Employment Standards Administration, U.S. Department of Labor by letter, telephone or in person. There are offices in over 350 communities throughout the

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country. Addresses are listed in the U.S. Government section of most telephone directories under:

U.S. Department of Labor
Wage and Hour Division

If not listed, write: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Washington, DC 20210.

COORDINATION IN ADMINISTRATION OF EQUAL EMPLOYMENT OPPORTUNITY LAWS

In the laws summarized, enforcement procedures and remedies differ. Coordination of efforts among the agencies administering the laws has been developing—sometimes through provisions of the laws themselves, sometimes by administrative agreement.

For example:

EEOC and State Civil Rights Commissions

EEOC will defer to the State Civil Rights Commission for a period of 60 days on any complaint of sex discrimination to which both State Civil Rights Acts and Title VII of the Federal Civil Rights Act of 1964 are applicable. If the complaint is not thus resolved, EEOC will intervene and first attempt remedy through conciliation. If conciliation is not reached, suit may be filed.

EEOC and Wage and Hour Division

Title VII requires its provisions to be harmonized with the Equal Pay Act, which amended the Fair Labor Standards Act. Accordingly, EEOC will apply the relevant interpretations and opinions of the Wage and Hour Administrator, U.S. Department of Labor, to equal pay complaints filed under Title VII.

EEOC and the Justice Department

When EEOC finds a *pattern or practice* of discrimination (rather than an individual complaint), it can advise the Justice Department and request the Attorney General to take action in the U.S. District Court.

EEOC and OFCC

On May 20, 1970, the EEOC and the OFCC announced an agreement to reduce duplication of compliance activities in situations where both Title VII and Executive Order 11375 apply. Essentially, OFCC and/or the individual compliance agencies handle broad, company-wide compliance reviews, and EEOC, the individual complaint investigations. In investigating such complaints, EEOC acts both on behalf of OFCC and on its own behalf. OFCC provides EEOC with reports from compliance agencies, and EEOC provides OFCC with regular listings of charges under investigation, being conciliated, or settled. EEOC and OFCC, with leaders of industry, have jointly sponsored a number of affirmative action conferences.

STATE AGENCIES

Every state has designated agencies for dealing with discrimination complaints. Because these agencies differ from state to state and because the channels of complaint procedure differ, no attempt will be made to define possible state agencies. However, Appendix C presents available information on legislation in each state. Individuals can contact state legislators for more specific information on the compliance agencies. As mentioned previously, in any cases concerned with employment practices, before investigation by a federal agency (EEOC), a charge must be deferred for 60 days to a state fair employment practice agency where an enforceable fair employment practice law is in effect. It, therefore, becomes the responsibility of each educator to be cognizant of state laws and agencies as well as federal procedures. If one is unsure of responsibilities of various agencies, a good starting point is the Office of the Attorney General of the state involved. In some instances the State Attorney General's Office may have jurisdiction over certain discriminatory grievances; if not, they should be able to direct one to the appropriate agencies.

The State Department of Public Instruction should also be able to provide information concerning state legislation affecting educational programs.

The chart below presents an example of possible procedures at the local level for dealing with civil rights grievances. Local communities probably have similar agencies and procedures, and their help may be solicited in the initial stages of a complaint.

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A complaint is filed:
Civic Center
410 E. Washington St.
Iowa City, Iowa 52240
(Phone 354-1800)

Investigation by the Human Relations Coordinator and the City Attorney's Office. The person who filed the complaint, the person complained about and others are interviewed.

A detailed report and recommendations are submitted to the Commission. A finding is made:

Probable cause.
There is reason to pursue the case further and seek conciliation.

No probable cause.
The person who filed the complaint was wrong, or had inadequate evidence. No further action is taken.

During conciliation, an attempt is made to obtain a settlement satisfactory to both sides. If conciliation fails, the Commission may:

Close the case without taking further action.

Direct the City Attorney to file a criminal charge in Magistrate's Court.

If a person is found guilty in this court, a fine of $100 or sentence up to 30 days in jail may result.

Direct the City Attorney to file action in Johnson County District Court.

A temporary injunction requiring the accused person to cease violating the ordinance may be issued. Upon final disposition, a person found guilty could be required to pay damages to the person who filed the complaint.

CHAPTER V

Court Precedents

Patricia L. Geadelmann

The majority of athletics cases brought to court thus far have been filed on the basis of the Fourteenth Amendment's equal protection clause. In bringing charges of a Fourteenth Amendment violation, one must be able to apply one of two tests that the Supreme Court uses to review actions that classify persons. A *San Francisco Law Review* article (42) has spelled out the provisions of these tests:

> 1. *"Compelling State Interest Test."* This invokes strict scrutiny in review. The state must establish that the classifications are necessary to further its valid purpose and that no lesser distinction could achieve the same result. The strict standard of review is used when a classification concerns a "suspect" category or when a law infringes on a right guaranteed "fundamental" by the Constitution.
>
> 2. *"Rational Basis Test."* This is used in economic and commercial matters and all other circumstances where means of classification are "reasonably related" to the purposes of the policy. The presumption is made that the policy under question does not violate the equal protection guarantee. (42, p. 655)

The article goes on to say, "cases challenging school policy are more difficult to win if a rational basis standard is used, since courts generally find some reasonable relationship between the classification made and the purpose of the policy" (42, p. 646).

Two factors complicating Fourteenth Amendment litigation are that the Supreme Court:

1. has not clearly ruled sex to be a "suspect" category
2. ruled in *San Antonio Independent School District vs. Rodriguez*, 411 U.S. 1 (1973), that education is not considered a federally protected right

In *Reed* vs. *Reed*, 404 U.S. 71 (1971) the Supreme Court suggested the acceptance of a stricter standard but made its ruling on the lesser standard, thus avoiding the clear declaration of sex as a "suspect" classification. In a later case, however, *Frontiero* vs. *Richardson,* 411 U.S. 677(1973), the court ruled invalid a military policy whereby males could automatically claim their wives as dependents but females had to prove that their husbands were financially dependent on them. Four justices held that sex is an inherently suspect classification and therefore subject to strict scrutiny. Three other justices concurred in the ruling, but did not view it necessary to rule on the question of sex as a suspect classification. Since the *Frontiero* case, however, the court has stepped backwards and ruled on sex discrimination cases under a less strict standard of review.

There is precedent at the *state* level for sex to be considered a suspect class. The California Supreme Court in 1971 made this statement in the decision of *Sail'er Inn, Inc.* vs. *Kirby,* 5 Cal. 3d 1, 485 P. 2d 529, 95 Cal Rptr 329 (1971):

> Sex, like race and lineage, is an immutable trait, a status into which the class members are locked by the accident of birth. What differentiates sex from nonsuspect statuses . . . is that the characteristic frequently bears no relation to ability to perform or contribute to society . . . . The result is that the whole class is relegated to an inferior legal status without regard to the capabilities or characteristics of its individual members . . . . Where the relation between characteristic and evil to be prevented is so tenuous, courts must look closely at classifications based on that characteristic lest outdated social stereotypes result in invidious laws or practices. (116, p. 1205)

That discrimination in education is not to be allowed was most dramatically illustrated in the historic case of *Brown* vs. *Board of Education of Topeka,* 347 U.S. 483, 98 LEd 873, 74 S.Ct. 686 (1954). The class that was victimized in that instance was the blacks. In striking down the separate schools for separate races, the Court said:

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms.

Even though the *Rodriquez* case denied education as a right, the Court granted that all should have equal opportunity within the school system, and reaffirmed the mandate of *Brown.*

As discussed in Chapter III, the courts have likewise not found athletic participation to be a right in and of itself, but the court in *Gilpin* vs. *Kansas State High School Activity Association, Inc.,* 377 F. Supp. 1233

(1974) made the distinction between right and privilege and opportunity this way:

> The question in this case is not whether the plaintiffs have an absolute right to participate in interscholastic athletics, but whether the plaintiff can be denied the benefits of activities provided by the state for male students. The plaintiff has not alleged that she has an absolute right to participate on any interscholastic team, including her high school's cross country team, and the Court certainly would not recognize such a right. She does, however, maintain that she has a right not to be automatically disqualified from participating in interscholastic competition based solely upon her sex, rather than upon her athletic ability. Since the importance of this interscholastic competition as an integral part of the plaintiff's overall educational experience is substantial, and since she is admittedly being denied the opportunity to reap the benefits afforded by such competition solely upon the basis of her sex—a suspect classification—it is simply irrelevant whether such participation is characterized as a right or as a privilege. (137, p. 1241)

As one studies the court cases it is important to note the level of the court decision. For instance, the *Gilpin* case just cited was a U.S. District Court decision, the lowest level of the federal court system. Decisions at this level have a much narrower range of impact on the future court decisions than those of higher levels. A series of district court decisions, however, could constitute a pattern which would be more influential in establishing precedent. The next level is that of the circuit courts of appeals. Decisions at this level would have direct application to all district courts in the region, and hence are more significant in determining precedents. The ultimate level of appeal is the United States Supreme Court and decisions at this level become "the law of the land."

No athletics case has reached the Supreme Court to date, but at least two significant cases have been heard by the circuit courts of appeals, and there have been a number of decisions at the district court level. Table 1 represents a summary of the major litigation involving sex discrimination in athletics to date (1977). As one studies these decisions, a pattern seems to emerge:

1. In most cases the individual participant won her case if she filed an individual suit and asked to participate in a non-contact sport.
2. Class actions were generally unsuccessful cases.
3. Bids to participate in contact sports were generally unsuccessful.
4. The chances of winning the case were greater if no sports programs existed for the girls. When ruling in favor of the plaintiff,

the judges frequently indicated that if a separate program were available, the mixed competititon would probably not have been granted.

5. The courts generally acknowledged that athletics are valuable educationally and that both girls and boys should have equal opportunities for participation.

All of the cases included involve high school girls. Litigation on the college level in this area has been virtually nonexistent. In early 1973 a group of women from Florida filed a lawsuit in the U.S. District Court for the Southern District of Florida against the NEA, AAHPER, NAGWS, AIAW, NAPECW, FAPECW, FCIAW, and the SAPECW. The suit claimed a denial of equal opportunity since the AIAW had a rule prohibiting scholarship recipients from competing in its tournaments and the group filing suit were scholarship players at Marymount College in Florida. Representatives of all the defendants met and after the hearing, their legal counsel advised modifying the scholarship statement so as to avert the suit. This modification was made and no court decision was therefore rendered.

The most significant athletics case decided under the Fourteenth Amendment is probably *Brenden* vs. *Independent School District 742*, 477 F. 2d 1292 (1973). This decision out of the Eighth Circuit and the prior district court decision, *Brenden* vs. *Independent School District 742*, 342 F. Supp. 1224 (1972), have been cited more frequently than any other cases of their kind. In *Brenden*, two exceptionally skilled girls requested permission to play on the boys' teams for tennis, cross-country, and cross-country skiing, since there were no such teams for girls. The defendants argued before the district court that the rule prohibiting mixed competition was valid in order ". . . to achieve equitable competition among classes. . . ." (130, p. 1233). Witnesses were produced who testified that:

> men are taller than women, stronger than women by reason of greater muscle mass; have larger hearts than women and a deeper breathing capacity, enabling them to utilize oxygen more efficiently than women, run faster, based upon the construction of the pelvic area, which, when women reach puberty, widens, causing the femur to bend outward, rendering the female incapable of running as efficiently. (130, p. 1233)

The court did not deny the validity of any of the physiological arguments raised by the defense, but the court did not recognize this presentation as having any direct bearing on the case since

> . . . these physiological differences . . . have little relevance to Tony St. Pierre and Peggy Brenden. Because of their level of achievement in competitive sports, Tony and Peggy have overcome these physiological disabilities. There has been no evidence that either . . . or any other girls, would be in any way damaged from competition in boys' interscholastic athletics, nor is there any credible evidence that the boys could be damaged. (130, p. 1233)

The circuit affirmed the lower court decision. In its decision, the court said:

> We recognize that because sex-based classifications may be based on outdated stereotypes of the nature of males and females, courts must be particularly sensitive to the possibility of invidious discrimination in evaluating them, and must be particularly demanding in ascertaining whether the state has demonstrated a substantial rational basis for the classification. (131, p. 1300)

In stating its decision, the circuit court further relied on a report of an experiment conducted in New York in 1969-70 to study the effects of and reactions to coed participation. Continuance of the practice was favored by 80 percent of the principals, directors, women's physical educators, coaches, and physicians, and by 90 percent of the boy team members, girl participants, parents, and coaches. As a result of this response, New York revised its regulations on coed competition in September 1973 to permit mixed competition in non-contact sports where there is only one team. Further, the principal is given the option of permitting a female of exceptional ability to play on the male team even if there is a team for females. However, in no instance are males allowed on female teams (60). Whether this differentiation between the sexes will be allowed to stand is a matter yet untested by the courts.

The other circuit court decision was that in *Morris* vs. *Michigan Board of Education*, 427 F. 2d 1207 (1973). Cynthia Morris originally sought an injunction from the district court in attacking a state high school athletic association policy prohibiting girls from participating in athletics with boys. A preliminary injunction was granted by the district judge on April 27, 1972, enjoining the athletic association from "preventing or obstructing in any way the individual plaintiff or any other girls in the State of Michigan from participating fully in varsity interscholastic athletics and athletic contests because of their sex" (142, p. 1208). The scope of the case had been broadened to a class action previous to the granting of the injunction. The significant factor about the injunction is that it appeared to apply to both contact and noncontact sports (the original desire of Morris was to participate in tennis).

Summary of Court Cases on Sex Discrimination in Athletics

Case	Court	Date	Nature
1. *Hollander* vs. *Connecticut Interscholastic Conference, Inc.*, No. 11 49 27 Superior Court, New Haven County Conn.	Superior Court New Haven County	March 29, 1971	High school girl wanted to participate on boys' cross-country and track teams. None for girls. Individual suit.
2. *Gregorio* vs. *Board of Ed. of Asbury Park.* No. A-1227-70 App. Div., Ap. 5, 1971	Superior Court, New Jersey	April 5, 1971	Female requested participation on boys tennis team. No team for girls.
3. *Reed* vs. *Nebraska Act. Assoc.*, 341 F. Supp. 258 (1972)	U.S. District Court D. Nebraska	April 12, 1972	Girl wanted to play on boys' golf team. None provided for girls. Individual suit.
4. *Harris* vs. *Illinois High School Assn.*, Civil No. S-Civ. 72-25	U. S. District Court S.D. Illinois	April 17, 1972	High school girl wanted to participate on varsity (boys) tennis team. None for girls. Individual suit.
5. *Brenden* vs. *Ind. School District*, 342 F. Supp. 1224 (1972)	U.S. District Court D. Minnesota	May 1, 1972	Brenden wanted to be on boys' tennis team, St. Pierre on the cross-country skiing and distance running teams. None provided for girls. Individual suit.
6. *Brenden* vs. *Ind. School District*, 477 F. 2d 1292 (1973)	U.S. Court of Appeals 8th Circuit	April 18, 1973	Ind. School District made the appeal.
7. *Bucha* vs. *Illinois High School Assoc.*, 351 F. Supp. 69 (1972)	U.S. District Court N.D. Illinois E.D.	Nov. 15, 1972	Girls wanted to be on boys' swim team—objected to restrictions applicable to girls which were not applied to boys' sports programs. Class action.
8. *Haas vs. South Bend Comm. School Corp.* 289 N.E. 2d 495	Supreme Court of Indiana	Nov. 27, 1972	Girl wanted to play on boys' golf team. Individual suit.

Summary of Court Cases on Sex Discrimination in Athletics

Ruling	Special Notes
In favor of defendants	Cited position of General Assembly of Conn. to "show solicitude for women" and safeguard them "where aspects of physical involvement are concerned." Said that to allow girls to compete with boys would remove incentive for boys and nullify the challenge to win and the glory of achievement.
In favor of defendants	Court used the psychological well-being of the girl as rationale for exclusion. Appeal court did not find this decision to be unreasonable or arbitrary.
Prelim. injunction granted to allow girl to participate	"Her right is the right to be treated the same as boys unless there is a rational basis for her being treated differently" (p. 262 at 5). "If the program is valuable for boys, is it of no value for girls?"
In favor of defendants	Court said that there is no "right" to participate in interscholastic competition. "Classification by sex is not inherently suspect in this instance." Bylaws merely prohibiting mixed competition are not arbitrary and capricious. Classification by gender is "perfectly rational."
In favor of the girls	Girls' outstanding ability was a real factor in the decision. Implied favoring separate programs but stated these girls were exceptional
Affirmed the District Court Decision	Court rejected arguments that physiologically and psychologically girls would be at a disadvantage in mixed competition and declared, "their schools have failed to provide them with opportunities for interscholastic competition equal to those provided for males with similar athletic qualifications. Accordingly, they are entitled to relief" (p. 1302).
In favor of defendants	Girls' program did exist—differing regulations upheld on basis of physiological and psychological differences between males and females. Quoted testimony from *Brenden*.
In favor of girl	"Until girls' programs comparable to those maintained for boys exist, the difference in athletic ability alone is not justification for the rule denying 'mixed' participation in non-contact sports." The fact that the records of one sex are superior to the other is not sufficient evidence—for constitutional purposes an investigation would have to focus on the *causes* of any differential in M-F Performance.

Summary of Court Cases on Sex Discrimination in Athletics

Case	Court	Date	Nature
9. *Morris vs. Michigan Board of Education*, 472 F. 2d 1207 (1973)	U.S. Court of Appeals 6th District	January 25, 1973	Two girls wanted to play on boys' tennis team. Individual suit.
10. *Ritacco vs. Norwin School District*, 361 F. Supp. 930 (1973)	U.S. District Court W.D. Pennsylvania	August 3, 1973	Girls wanted to try out for the boys' tennis team rather than the girls' tennis team. Class action.
11. *Gilpin vs. Kansas State High School Act. Assoc. Inc.*, 377 F. Supp. 1233 (1974)	U.S. District Court D. Kansas	May 22, 1974	Girl wanted to be on cross country team. Individual suit.
12. *Commonwealth of Pennsylvania vs. Pennsylvania Interscholastic Athletic Assoc.*, Pa. Cmwlth, 334 A 2d 839	Commonwealth Court of Pennsylvania	March 19, 1975	Commonwealth filed suit against athletic assoc. maintaining rule forbidding mixed competition was unconstitutional under the State ERA.
13. *Darrin vs. Gould*, State of Washington, No. 43276	Supreme Court State of Washington	September 25, 1975	Two Darrin girls wanted to play on the high school football team. Action challenging a state athletic association rule excluding girls. Class action.
14. *Carnes vs. Tenn. Secondary School Athletic Assn.*, 415 F. Supp. 569 (1976)	U.S. District Court E.D. Tennessee	May 10, 1976	Female high school senior seeking prelim. injunction against TSSA prohibiting enforcement of a rule prohibiting mixed partic. in contact sports, of which baseball is so named and in which plaintiff seeks partic.
15. *Cape vs. Tennessee Sec. School Athletic Assn.*, 424 F. Supp. 732 (1976)	U.S. District Court E.D. Tennessee	Nov. 24, 1976	Female high school junior claimed that the application of six-player, half-court basketball rules which allow only forwards to shoot is a deprivation of her right to equal protection of the laws guaranteed by the Fourteenth Amendment. Also claimed right to relief under Title IX.

Summary of Court Cases on Sex Discrimination in Athletics

Ruling	Special Notes
Prelim. injunction granted. Subsequent to the injunction, the Michigan legislature passed a bill allowing females to participate in all non-contact sports	Court of appeals changed the injunction to apply only to non-contact sports.
Rule did not invalidly and unfairly discriminate. Girl had graduated and was no longer a member of the class.	"Sound reason dictates that 'separate but equal' in the realm of sports competition, unlike that of racial discrimination, is justifiable and should be allowed to stand . . . . " (p. 932)
Ruled in favor of girl	Court implied ruling might have been otherwise had a separate team existed for girls. As it was, there was *no opportunity* for a talented girl whereas all boys regardless of talent had the opportunity.
Rule declared unconstitutional	"The existence of certain characteristics to a greater degree in one sex does not justify classification by sex rather than by particular characteristic." (p. 843) ". . . it is apparent that there can be no valid reason for excepting these two sports (football and wrestling) from our order in this case." (p. 843)
In favor of girls. Said the association rule discriminated on the basis of sex which was in violation of the state's ERA	Court said, "the overriding compelling state interest as adopted by the people of this state in 1972 is that 'equality of rights and responsibility under the law shall not be denied or abridged on account of sex.' " Court cited an agreement with the rationale used in the Pennsylvania case (above).
Prelim. injunction granted.	Court questioned reasoning for TSSAA rule in that the rule permits males highly prone to injury to play while preventing highly fit females from playing. Court also questioned if baseball could reasonably be classified a contact sport. Stated that to deny Carnes participation would result in an irretrievable loss for her.
Rules declared to be in violation of the Equal Protection Clause of the Fourteenth Amendment	Rational basis test applied. Court stated, " . . . when a state chooses to deny a significant educational experience to a class of its citizens solely because of sex, and no rational justification for such different treatment can be found, the Constitution requires that such distinction be voided." Court said half-court rules are based on underlying assumption that "female athletes are weaker, less capable, and more awkward" generalizations which are "archaic and overbroad." Rules are under-inclusive in that weak males are not provided for. For most situations Title IX is not interpreted as granting a private right of action. If so, plaintiff first required to exhaust administrative remedies available under Title IX.

Shortly after the entry of the preliminary injunction, Act No. 138 of the Public Acts of 1972 was adopted by the Michigan legislature providing that:

> Female pupils shall be permitted to participate in all noncontact interscholastic athletic activities, including but not limited to archery, badminton, bowling, fencing, golf, gymnastics, riflery, shuffleboard, skiing, swimming, diving, table tennis, track and field and tennis. Even if the institution does have a girls' team in any noncontact interscholastic athletic activity, the female shall be permitted to compete for a position on the boys' team. Nothing in this section shall be construed to prevent or interfere with the selection of competing teams solely on the basis of athletic ability. M.C.L.A. 340.379 (2), Pub. Act. No. 138 (Mich. May 22, 1972).

Since the act was not to go into effect until the spring of 1973, the circuit court affirmed the injunction granted by the district court, but the circuit court also stated that the district court had gone beyond the relief requested in extending the injunction to include contact as well as non-contact sports. The circuit court consequently remanded the preliminary injunction to the district court for modification to apply only to noncontact sports.

This case represents a second instance in which provision has been made for a girl to participate on a boys' team even when a separate girls' team is present, but the same privilege has not been extended to boys.

There are at least two cases which have directly ruled in support of the separate-but-equal concept for athletic teams for the two sexes: *Bucha* vs. *Illinois High School Association,* 351 F. Supp. 69 (1972) and *Ritacco* vs. *Norwin School District,* 361 F. Supp. 930 (1973). The *Bucha* case not only involved separate teams but teams which were separate and different. A class action suit was filed by female high school students challenging limitations that the high school association had placed on their programs but had not placed on the boys' programs. These limitations included a prohibition on organized cheering, a one dollar limitation on value of awards, and a prohibition on overnight trips in conjunction with girls' contests.

The court summarized the legal question as being one of "... whether ... difference in treatment has some rational relationship to a valid state objective" (134, p. 75), and subsequently ruled that the challenged classification was rational. The court noted that which was questioned was "a matter of degree and professional judgment." Separate programs were supported by the court, backed by references to better times by men in the Olympics, better times by two boys from an Illinois school who went to the state swimming meet, and the testimony on physiological differences made in the *Brenden* case. The court said:

> All of these facts lend substantial credence to the fears expressed by women coaches and athletes in defendant's affidavits that unrestricted athletic competition between the sexes would consistently lead to male domination of interscholastic sports and actually result in a decrease in female participation in such events. (134, p. 75)

The court went on to say that the existence of a separate program for girls coupled with the physical and psychological differences noted in testimony supported the rationality of the Association to conduct a different program for girls.

In the *Ritacco* case, which was also a class action suit challenging an athletic association rule requiring separate girls' and boys' teams, the court declared that no class action existed since the girl had graduated from high school prior to the hearing and was no longer a member of the class she sought to represent. In ruling on the question of separate or mixed teams, the District Court of Pennsylvania said:

> Superficially, the maintenance of separate sports teams suggests possibility of a denial of equal protection of the laws, but sound reason dictates that "separate but equal" in the realm of sports competition, unlike that of racial discrimination, is justifiable and should be allowed to stand where there is a rational basis for the rule .... Indeed it seems clear that where the opportunities for engaging in sports activities are equal, as is true here, the rule requiring separate teams based on sex fosters greater participation in sports. (148, p. 932)

As was done in the *Bucha* case, the court referred to the physiological and psychological differences cited by the defendants in *Brenden*. It is interesting that neither the district nor the circuit court in *Brenden* found these differences pertinent to the decision, but that two other district courts found them to be substantial. One must remember, however, that in *Brenden* there was no separate program available for girls as was the case in both *Bucha* and *Ritacco*, and in addition the two girls in question were of recognized superior ability. Had they not been so skilled, the decision might well have been the reverse.

In *Gilpin* (137), a Kansas high school girl brought suit claiming that she had been denied equal protection by an athletic association rule that prevented her participation in cross-country solely on the basis of her sex. The school board of her district had adopted a policy permitting mixed competition in certain non-contact sports, including cross-

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country. Prior to the first meet, however, Ms. Gilpin was informed that a rule of the state association would prohibit her participation. A temporary restraining order was granted by the district court and a hearing subsequently held.

In the hearing, the court noted that the suit was filed on behalf of a single individual and was limited to the particular factual situation involved. In its decision to allow Ms. Gilpin to participate, the court said:

> Despite the fact that all males are permitted to participate on the team, no matter how untalented, Tammie has nevertheless been deprived of an equal opportunity to participate, solely on the basis of her sex. (137, p. 1241)
>
> The Association contends that the objective of its rule prohibiting mixed competition is to achieve equitable competition among classes . . . that the purpose for the rule is to ensure maximum interscholastic development and benefit to all students of the state. (137, p. 1242)

The court did agree that separation of the sexes could bear a relation to the advancement of maximum participation, but noted that separate programs simply were not available in this instance. Thus once again we have a court reinforcement for the maintenance of separate programs.

Reed vs. *The Nebraska School Activities Association*, 341 F. Supp. 258 (1972) was a district court decision which granted a preliminary injunction that subsequently allowed a high school girl to play on the boys' golf team (which was contrary to the state rule prohibiting mixed competition). No team existed for the girls and no mention was made by the court of the desirability of maintaining separate teams. The court said,

> The issue is not whether Debbie Reed has a "right" to play golf; the issue is whether she can be treated differently from boys in an activity provided by the state. Her right is not the right to play golf. Her right is the right to be treated the same as boys unless there is a rational basis for her being treated differently.
> If the program is valuable for boys, is it of no value for girls? (147, p. 262)

The case of *Haas* vs. *South Bend Community School Corporation*, 289 N.E. 2d 495, settled by the Supreme Court of Indiana in 1972, is similar to those previously discussed in that the plaintiff is a high school girl denied an opportunity to participate on the school golf team because of an athletic association rule prohibiting mixed sex competition. The case was on appeal from the state circuit court where the injunction was denied. At the trial, considerable evidence was introduced to support the physiological differences between the sexes and hence justify the separation of the sexes. The Supreme Court pointed out, however, that " . . . a rule or law which appears to be non-discriminatory on its face may nevertheless be struck down as a denial of equal protection if it is unreasonably discriminatory in its operation" (138, p. 499). That there were no teams for girls constituted a discriminatory practice in operation, said the court.

The court opinion in *Haas* is particularly interesting because of the arguments presented by the defense and subsequently answered by the court. The arguments are those that have been commonly advanced by school and athletic directors resistant to the implications of Title IX. The first argument was that of the necessity of protecting the girls. The defense reasoned that boys were superior physically and if girls were allowed on boys' teams, the reverse would also have to be permitted, and the result would likely be elimination of participation for girls altogether. The court answered as follows:

> It is unnecessary to sound the fire alarm until the fire has started . . . . We are here only concerned with its application . . . . At the present time few, if any, programs are in operation which need such protection. Until girls' programs comparable to those established for boys exist, the rule cannot be justified on these grounds. (138, p. 500)

Second, the defense argued that the costs of administering expanded programs for girls would increase. In particular they referred to costs for locker room supervision. The court answered that since a licensed teacher must be a coach who is capable of supervising students of both sexes, the sex of the coach should not be a factor. The court further stated:

> The appellees have not attempted to estimate the amount of additional expense which would be incurred due to the supervision of girls' dressing rooms. However, this increased expense, which would not appear to be substantial when one considers the cost of administering the entire system of interscholastic athletics in high schools throughout the state, cannot be considered a justifiable reason for denying approximately one-half of the high school students in Indiana the opportunity to participate in interscholastic competition.
>
> This Court is of the opinion that at this time no reasons have been presented, nor do any exist, which justify denying female high school students the *opportunity to qualify* for participation with

> male high school students in interscholastic athletic contests which do not involve physical contact between the participants. (138, p. 500)

Additionally the court questioned the evidence presented by the defense claiming male superiority:

> No trial court investigation into the relative athletic abilities of men and women could be complete merely upon a demonstration that male track and field champions have historically bettered their female counterparts in the record books. Such evidence cannot support a conclusion that the male sex is athletically superior. An objective observer could not determine which of two armies is superior merely by examining the strongest and bravest soldier in each. For constitutional purposes, such an investigation would necessarily focus on the causes of any differential in the relative performances of male and female athletes. (138, p. 503)

The entire question of separate-but-equal has yet to be resolved. On the one hand, ERA supporters clamor for the naming of sex as a suspect classification which would negate *any* separate-but-equal distinctions. On the other hand, the final draft of the Title IX Regulations allows for separate-but-equal programs in athletics. (Title IX does not allow for separate-but-equal treatment of the sexes in any other educational area except sex education.)

The issue that ultimately must be resolved by the courts might be summarized: Are there differences between the sexes which justify disparate treatment of males and females by the state? Whether the courts will choose to treat females as a class and allow separation of the sexes or whether the courts will choose to treat each person according to individual abilities regardless of gender remains to be seen. There are those who argue for the former, claiming that only by separateness will women have an equal opportunity to participate in athletics and physical education, and there are those who argue for the latter, claiming that separation serves to confine women of exceptional ability to lower levels of competition and performance.

Still under question is a definition of *contact sports*. Various courts have offered various listings, but no consistency or agreement has been reached. In Title IX the Regulations list boxing, wrestling, rugby, ice hockey, football, and basketball and further provide for the inclusion of "other sports the purpose of major activity of which involves bodily contact" (86.41 [b]). Baseball has been subject to the most question, with state and district courts offering opinions on both sides of the issue. Much of this controversy has revolved around the Little League question which eventually was resolved by a change in federal charter to allow female participation.

Soccer is one sport which has not yet been delineated, but it seems probable that it will be included as a contact sport. There is at least one school, however, which has a coed soccer team, Cornell College in Mt. Vernon, Iowa (110). Four women made the 30-player squad, and the coach, Jim Davis, feels that they have made a positive contribution to the team. He was reported as saying,

> Soccer is one of the few contact sports where power and size aren't all important. It's agility, the ability to think clearly and to understand the dynamics of the game that count most in soccer. That's why women have a chance to excel at it.

The decision of the Commonwealth Court of Pennsylvania in *Commonwealth of Pennsylvania* vs. *Pennsylvania Interscholastic Athletic Association*, Pa. Cmwlth., 334 A. 2d 839, opened contact sports as well as noncontact sports to all, regardless of sex. The case, brought under the state ERA, has far-reaching implications. The ruling was made with the following rationale:

> . . . even where separate teams are offered for boys and girls in the same sport, the most talented girls still may be denied the right to play at that level of competition which their ability might otherwise permit them. For a girl in that position, who has been relegated to the "girls' team," solely because of her sex, "equality under the law" has been denied. (135, p. 842)
>
> The notion that girls as a whole are weaker and thus more injury-prone, if they compete with boys, especially in contact sports, cannot justify the By-Law in light of the ERA. Nor can we consider the argument that boys are generally more skilled. The existence of certain characteristics to a greater degree in one sex does not justify classification by sex rather than by the particular characteristic. Wiegand v. Wiegand, 226 Pa. Super. Ct. 278, 310A.2d426 (1973). If any individual girl is too weak, injury-prone, or unskilled, she may, of course, be excluded from competition on that basis but she cannot be excluded solely because of her sex without regard to her relevant qualifications.
>
> Although the Commonwealth in its complaint seeks no relief from discrimination against female athletes who may wish to participate in football and wrestling, it is apparent that there can be no valid reason for excepting those two sports from our order in this case. (135, p. 843)

A second case settled on the basis of a state equal rights amendment is *Darrin* vs. *Gould*, No. 43276, State of Washington Supreme Court, September 25, 1975. The case speaks directly to contact sports and in fact was brought by two sisters desiring to play football on the high school team. The girls lost their case at the trial court level but on appeal to the supreme court in the state the trial court decision was reversed. The suit was brought as a class action.

Under protest was a rule by the Washington Interscholastic Athletic Association (WIAA) which prohibited girls from participating in interscholastic football. The girls had been allowed to practice, and the high school coach testified that the girls had "been able to hold their own with the boys . . . and would be allowed to play in interscholastic contests were it not for the WIAA regulation" (136, p. 2). The court ruled that the sex classification by the WIAA was unconstitutional (state constitution article 31, the ERA).

The WIAA argued that the challenged regulation was justifiable because

> the *majority* of girls are unable to compete with boys in contact football, and the potential risk of injury is great. Furthermore, allowing girls to compete in contact sports with boys will result in boys competing on girls' teams resulting in distruption to the girls' athletic programs. (136, p. 18)

In answering the arguments raised by the WIAA, the court stated, "there is no finding that what may be true for the majority of girls is true in the case of the Darrin girls or girls like them" (136, pp. 18–19). The court also pointed out that the breasts could be adequately protected and that there was not a substantial risk of injury to the procreative organs of girls. In addition, the court rejected the rationale of the sex-based regulation by saying:

> Boys and girls run the risk of physical injury in contact football games. The risk of injury to 'the average boy' is not used as a reason for denying boys the opportunity to play . . . . Moreover, the fact that some boys cannot meet the team requirements is not used as a basis of disqualifying those boys that do not meet such requirements. Instead, WIAA expressly permitted small, slightly built young boys, prone to injury, to play football without proper training to prevent injury. (136, p. 19)

The court labeled the argument that present girls' programs would be disrupted by eliminating sex segregated teams as "conjectural in character to what might happen," citing an absence of any such evidence. The court went on to add, "moreover, evidence supporting a public policy contrary to that contained in constitutional and statutory mandate cannot be allowed to override such a mandate" (136, p. 20). The mandate of the ERA, in the opinion of the court, left no place for qualifications or classifications according to sex.

It is not unlikely that the federal courts might also make similar decisions in recognition of individual abilities and no longer bar females as a class from participating in contact sports or any activity. In the summer of 1975 a nine-year-old girl won the right in federal district court in Michigan to compete in an AAU boxing tournament (69). The AAU had prohibited girls from participating in contact sports. The court considered the AAU to be acting under the color of state law since it used public buildings for its tournaments.

In October 1975 a district judge in Santa Fe, New Mexico ruled that the state board of education had to allow Sally Gutierrez to play on the Quemado High School football team. The decision overruled the board's regulation prohibiting girls from competing in contact sports with boys (112).

Jo Ann Carnes was granted a preliminary injunction by the U.S. District Court, E.D. Tennessee, on May 10, 1976, which allowed her to participate on the high school boys' baseball team. The Tennessee Secondary School Athletic Association had a rule prohibiting mixed competition in collision sports for two reasons:

1. To protect females from exposure to an unreasonable risk of harm
2. To protect female sports programs from male intrusion. (153, p. 571)

The court questioned the first justification for the rule because:

> the rule may permit males who are highly prone to injury to play baseball . . . while, at the same time, it may prevent females, whose physical fitness would make a risk of physical harm unlikely, from participating . . . .(153, p. 571)

The second justification was also questioned since the school had no baseball team for girls. The plaintiff could only play on the single team or not at all. Thus, the rule operates as a complete bar to opportunity to compete solely on the basis of sex.

The court further questioned the classification of baseball as a contact sport, noting that rules prohibit body checking, that baserunners are generally tagged with a glove, and that when played properly collisions at the plate are infrequent.

Still another indication of a movement toward total equality is represented by a Sacramento, California, City Council decision to refuse to finance the 1976 Powder Puff Derby. The cross-country airplane race for women was denied assistance because it discriminates against men. The vice mayor of the city was quoted as saying:

> I'm not knocking the organization or the air race, but if an organization came in and asked us for money for an air race only for men, you'd know women's groups would protest. If an organization came in and asked for money to promote an air race only for Caucasians, you'd know the minority groups would oppose it. (95)

While a valid argument can be made that separate-but-equal programs best ensure maximum participation for women, opponents of this stand argue that it is philosophically inconsistent to treat women as a separate class in athletics due to their physical abilities, yet treat women and men as a single class in matters of employment where physical abilities may be a factor. It should also be noted, however, that the physical requirements of very few jobs regularly call for the exertion of maximum effort to the same extent that participation in athletics does. There have been instances where the courts have disallowed physical criteria which have adversely affected women's opportunities in employment if those physical criteria could not be shown to be essential to the job.

In the case of *New York Division of Human Rights* vs. *Department of Parks and Recreation*, 38 App. Div. 2d 25, 326 N.Y.S. 2d 640 (1st Dep't 1971), the minimum height and weight requirements for lifeguards were successfully challenged. The court ordered that the defendant "... test and train applicants to ascertain whether or not they meet the requisite skill and efficiency for being a lifeguard, consistent with due concern for public safety ... " and " ... offer employment to successful applicants without regard to sex." (143, p. 644).

The minimum physical requirements for umpires were similarly overturned in the *New York State Division of Human Rights vs. New York-Pennsylvania Baseball League*, 36 App. Div. 2d 364, 320 N.Y.S. 2d 788 (4th Dep't. 1971). aff'd., 29 N.Y.S. 2d 921, 279 N.E. 2d 856, 329 N.Y.S. 2d 99 (1972).

Margot Polivy, legal counsel for AIAW, addressed the AIAW Workshop for Administration of Womens' Athletic Programs on Legal Opinions and Mandates at Boone, North Carolina on August 5, 1975 (93). After discussing the litigation to date she identified the following factors as having potential significance in future court decisions:

1. The fact that there are now economic and educational advantages which are offered to men, but have been denied women. The court has recognized this in matters of race but not sex thus far.
2. The fact that where exclusionary rules exist, they have been promulgated by predominantly male administrators.
3. The fact that expert testimony can be made regarding the potential of women and the impact of being deprived of basic skills

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> and athletics. Additionally, the fact that there is a high relationship of success in sports to such non-sex factors as desire, concentration, etc.

Polivy further addressed the issue of a difference in student desire versus administrative philosophy, specifically in reference to the question: what happens when students want identical programs but the women administrators do not? It was Polivy's opinion that in the future there would be a much heavier input of student interest and opinion into programs.

The educational and economic benefits resulting from athletics provided a strong base for the 1976 case of *Cape v. Tennessee Secondary School Athletic Association* (152). Virginia Cape brought the suit charging a violation of equal protection because girls were forced to play six player, half-court basketball in Tennessee while males played the five player full court game. Cape charged that her chances to receive an athletic scholarship were severely limited because she was being

> denied the full benefits of playing basketball because as a guard she is never able to set up plays and participate in the strategy of the game . . . and denied the physical development that results from playing the full court game. (152, p. 735)

The executive secretary for the TSSAA testified for the continuation of the girls' rules because they:

1. Were more interesting to the fans
2. Were necessary to prevent girls from straining themselves
3. Allowed more participation
4. Aided the clumsy girls who couldn't play full court. (152, p. 737)

The court did not rule these reasons unconstitutional in and of themselves, but ruled that the application of the above solely on the basis of sex was without rational relationship and hence unconstitutional. The objections of the court to the TSSAA arguments were as follows:

> The Court is of the opinion that the objectives of sustaining crowd interest and support (game receipts) are insufficient justifications to support a sex-based classification resulting in disparate educational opportunities. We note that administrative convenience . . . has been rejected several times as a basis for sex discrimination . . . . . It is unlikely that a *predicted* drop in crowd support would suffice for support of a sex-based classification.
>
> Because there are surely some boys who could benefit from the split courts, less strenuous game played by the girls, the classification fails to include all the weak and incapable athletes. Similarly, there are female athletes, including the plaintiff, who are willing and

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> able to play the full-court game. Therefore, the classification includes those not in need of protection.
>
> The split court rules do allow a team to play six players, instead of the usual five . . . but . . . a full-court game often requires much substitution and . . . . may result in more participation for a greater number of players . . . . Regardless . . . the Court finds that classification on the basis of sex is not a rational means of accomplishing the objectives of greater participation.
>
> . . . the sex-based classification is both over and under inclusive in relation to the objective of allowing awkward and clumsy athletes to play. Undoubtedly, there are many awkward and clumsy male athletes who could benefit from playing under the split-court rules. Also, there are many graceful and agile female athletes who gain nothing from rules intended to benefit the awkward and clumsy. (152, p. 741—not presented in order found in text)

The court said in summary:

> The Court recognizes that athletics 'has come to be generally recognized as a fundamental ingredient of the educational process.' Athletics is no longer strictly an 'extra-curricular' activity but has become an integral ingredient in a well rounded curriculum. Thus, any injury suffered by the plaintiff can be spoken of in terms of a deprivation of an equal educational opportunity solely by reason of her sex.
>
> Furthermore, the proof shows that plaintiff is deprived of the greater health benefits enjoyed by male players under the full-court rules. And, finally, the proof establishes that the plaintiff, due to the shooting prohibition applied to guards, has a lesser opportunity to gain a college scholarship than she would if she could play under the full-court rules. (152, p. 743–744)

In addition to being filed under the Fourteenth Amendment, this case was also filed as violation of Title IX. The findings of the Court were based entirely on the Equal Protection Clause of the Fourteenth Amendment. In relation to Title IX the Court said:

> . . . for most situations, Title IX is not to be interpreted as a grant of a private right of action. Secondly, even if a private right of action could be said to exist under Title IX, it would appear that a plaintiff would be required to exhaust the administrative remedies made available under the Act before bringing an action in federal court. (152, p. 738)

Whether there is in fact a private right to sue under Title IX is yet to be fully determined, but complainants should be advised of the present requirements to exhaust present administrative remedies before pursuing court action.

The cases charted and discussed reflect a remarkable progress from one of the first cases to be litigated, *Hollander* vs. *Connecticut Interscholastic Conference, Inc.*, No. 114927 (139). In that decision the court refused to allow a female to participate on the boys' cross-country team because of the following rationale:

> The present generation of our male population has not become so decadent that boys will experience a thrill in defeating girls in running contests . . . with boys vying with girls in cross-country and indoor track, the challenge to win, and the glory of achievement, at least for many boys, would lose incentive and become nullified. Athletic competition builds character in our boys. We do not need that kind of character in our girls, the women of tomorrow.

How far we have come since that 1971 decision! Before us remain many questions

- the definition of contact sport
- the physical capacities of women
- the degree of equality in separate-but-equal
- the operational equality of open programs for all

Those are questions for which currently we have no clear and consistent answers. The American Medical Association issued an opinion in 1974 on female athletics (43) which denounced mixed sex participation in contact sports while approving single sex participation in contact sports. Yet we already have court opinions approving the reverse in the *Pennsylvania* and *Darrin* cases. We have court opinions supporting separate-but-equal in athletics and court opinions denouncing it.

The future is indeed in the courts. We are only beginning. Twenty years since the historic *Brown* decision (see page 00), we still struggle with the problems of desegregation. Title IX Regulations have been in effect since 1975, and we have yet to see the first court decision under Title IX. Year one of the federal ERA is yet to come. While we can point to two athletics cases under state ERAs which on the face have far-reaching effects, no court has yet ruled upon the question of whether comparable sex-separate programs (if in effect) would comply with the ERA. In both the *Pennsylvania* and *Darrin* cases females were the deprived sex; comparable programs were not present. In *Darrin*, the judge specifically said that a state association rule could not be used to deny girls the right to participate, and "this is all the more so when the school provides no corresponding girls' football team . . . ." Thus the door seems to remain open for separate teams.

Another point to keep in mind is that the suits brought thus far have involved girls of exceptional athletic abilities where any physical differences that might be representative of a sex as a whole have been virtually absent. No court has made a substantial case for or against the existence of physical differences between the sexes, except to say that individuals who are outstanding should not be confined to averages of the group as a whole. Again, as a general rule, highly organized and developed programs have not been in existence. In addition, it is important to note that to date no major class action suit has been settled on the level of the federal courts.

What the state ERAs and federal ERA will mean ultimately is still speculation, but more and more are expressing concerns about the dangers of possible broad, sweeping generalizations and interpretations. In the *Darrin* case, Judge Hamilton wrote a concurring opinion indicating these same kinds of concerns:

> With some qualms I concur in the result reached by the majority. I do so, however, exclusively upon the basis that the result is dictated by the broad and mandatory language of . . Washington's ERA. Whether the people in enacting the ERA fully contemplated and appreciated the result here reached, coupled with its prospective variations, may be questionable. Nevertheless, in sweeping language they embedded the principle of the ERA in our constitution, and it is beyond the authority of this court to modify the people's will. So be it. (p. 22)

The problems of sex discrimination, like those of racial discrimination, will be solved slowly, for the force of the court is confronting the power of a long-established social system. As part of the social system, however, we have the ability to contribute to the solution of such problems. Whether we accept the responsibility to enact the philosophy of equality or wait for a court to dictate enactment of philosophy is a choice we all have. We can make a significant difference if we choose to do so, and the difference can be made *today* rather than several *tomorrows* hence. We can decide for ourselves or have the court decide for us. In any case it seems likely that the concept of equality will prevail and that actions of discrimination will disappear. It is indeed merely a matter of time. It should be remembered, however, that our students have a limited amount of time, and to deny them an educational opportunity may affect them for a lifetime.

CHAPTER VI

Sex Role Stereotyping

Patricia L. Geadelmann

One of the most prevalent forms of discrimination and oppression lies in the sex role stereotyping that exists in the print and broadcast media and in our everyday social interactions and attitudes. The stereotyping may be in the form of a very subtle influence, but the factor is very real and significant in shaping both thought and behavior. Laws have been passed to censor the overt, quantifiable forms of discrimination evidenced in differential salary schedules and job opportunities, but no comparable legal tools exist to combat the molding influences of sex role stereotyping. This chapter will explore some of the problems of stereotyping by print and broadcast media and some legal recourses available to individuals to combat it.

PRINT MEDIA

Print media which serve a direct function in the educational process include textbooks and curricular materials, guidance materials, tests (vocational, interest, intelligence and achievement), newspapers and magazines. The problems with stereotyping or sexist material are easily illustrated.

The most thorough study of content and role portrayal in elementary readers has been done by Women on Words and Images (30), a group of New Jersey women whose work resulted in the publication *Dick and Jane as Victims*. Their study involved 134 readers from 14 different publishers containing 2,760 stories. In their analysis, boy-centered stories outnumbered girl-centered stories by a ratio of five to two. Women were portrayed in 26 different occupations in comparison to 147 for the men. The study showed that in the text illustrations, boys were almost without exception taller, participated in athletics while girls watched, and acted independently while girls did not.

In content analysis it was found that girls were allowed to compete only half as much as boys, but that the boys nearly always won. In one instance a girl won a swimming race against a boy, but he then went on to beat her five times. If a girl did win, it was by accident or fluke or because a boy taught her originally. Boys were in the positions of power, and to get praise a girl had to play better than a boy. In one instance a girl got on a baseball team, only to be ridiculed by the other team with jests at the team's assumed inferiority since they

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had a girl as pitcher. Real friends are shown to be those of the same sex. Girls were shown practicing the domestic role continuously while the boys were out playing. The authors of this study called for an open portrayal of boys and girls in all the roles to remove the official approval the stories now appear to give to conventional stereotypes.

It has frequently been said that schools reflect the status of society. Levy and Stacey (85) cited a study by Janice Pottker comparing the actual sex ratio of occupations reported by the U.S. Department of Labor with the ratio believed to exist by the readers. The findings showed that the readers were more sexist than the society they were supposed to reflect.

Levy and Stacey (85) also examined "Alpha One," a phonetics program used in Long Island and New York City school districts for the kindergarten and first grade levels. Each letter in the alphabet was assigned a gender. All 21 consonants were males. The five vowels were represented by females, each of whom had something wrong with her.

At the high school level, women have been essentially omitted from history and literature as noted by Trecker (119). Trecker points to the fact that occasional references are made to the position of women in various cultures and time periods. Positions of men are not singled out, however. The assumption seems to be that the male role is history itself and pervades through all. To write about men in history is the norm. To note women in history has been the exception.

Still another source of stereotype perpetuated by the schools is found in the educational testing system. Saario et al. (111) and Tittle (118) studied content and interpretation models for a number of standardized tests. Content bias was indicated by the frequency of male and female noun and pronoun use. Women were portrayed almost exclusively as homemakers. Young girls did female chores while young boys played or took on leadership roles. Some items seemed to imply that the majority of the professions were closed to women.

Fredriksson (66) reported on the establishment of the Nordic Cultural Commission with representatives from Denmark, Finland, Norway and Sweden to study sex roles in education and sex role research. Their report was a clear mandate for change, and a new curriculum adopted in 1970-1971 reflected that mandate:

> . . . schools should work for equality between the sexes—in the family, on the labour market, and within the community as a whole. This should be done through equal treatment of boys and girls in the work at school and by counteracting traditional attitudes to sex roles and stimulating pupils to discuss and question

> the differences which exist between men and women in many fields in respect of influence, jobs and wages. (66, p. 70)

* * *

> Schools should work on the assumption that men and women will have the same role in the future, that preparation for the role of parenthood is equally important for boys and girls, and that girls have reason to be as interested in vocation as boys. (66, p. 71)

Newspapers and magazines further perpetuate the stereotypes. Job advertisements which specify a preferred sex without establishing that sex is indeed a bona fide occupational qualification have been found illegal by the courts; nonetheless such ads continue to appear in many newspapers. The sports pages add to the problem more so perhaps by sins of omission than commission. Even a cursory glance will clearly show men's sports programs receiving the overwhelming majority of the column inches. A further problem with sports coverage comes from a differential focus in column content, illustrated by frequent references to the appearance, social life and family commitments of female athletes, as contrasted with a concentration on the skill of male athletes.

In addition, traditional women's pages continue to reinforce the homemaker role as being females' primary responsibility. Even though alternative roles may be written about, the very presence of such articles on the women's page results in a more narrow readership. A further problem involves references to women in terms of their husband's name rather than their own, as well as an indication of the marital status of females but not of males.

Many hoped that when the final Regulations for the interpretation of Title IX were released, they would have a clear handle for use in forcing changes to eradicate the above illustrated problems. Those rules, however, failed to directly cover sex role stereotyping and HEW Secretary Caspar Weinberger issued this statement in explanation:

> The new section explicitly states the Department's position that Title IX does not reach the use of textbooks and curricular materials on the basis of their portrayals of individuals in a stereotypic manner or on the basis that they otherwise project discrimination against persons on account of their sex. As stated in the preamble to the proposed regulation, the Department recognizes that sex stereotyping in textbooks and curricular materials is a serious matter. However, the imposition of restrictions in this area would inevitably limit communication and would thrust the Department into the role of Federal censor.

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> Accordingly, the Department has construed Title IX as not reaching textbooks and curricular materials on the ground that to follow another interpretation might place the Department in a position of limiting free expression in violation of the First Amendment. (48, [illegible]135)

Section 86.36 of the final regulations does speak to the use of counseling and appraisal materials as follows:

> (b) A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias.

The comment period allowed by HEW to individuals and groups for reactions and suggestions to the proposed rules prompted considerable response in the area of sex stereotyping. The ACLU took this stand:

> The proposed regulations are silent on the obligations of recipients to eliminate sex bias from educational, recruiting, testing, counseling, and other programs. While we agree that the use of any particular textbook or educational material should not be banned, we recommend that HEW exercise a leadership role in encouraging recipients to review their educational materials . . . for sex bias, promulgate guidelines on the indicia of sex bias in such educational materials, encourage the use of materials which present a balanced view of the historical, cultural, literary, scientific, political and sociological contributions of women, and discourage course syllabi which present an unrebutted stereotypical view of either sex. HEW should provide to recipients the technical expertise to revise sexist instructional materials, to engage in periodic review of skills training materials for sex bias and to educate administrators, teachers and counselors as to what constitutes sex bias in educational materials. (34, pp. 2-3)

The statement submitted by the Iowa Commission on the Status of Women had this to say about textbooks and curriculum:

> While we are sympathetic with the concern about infringement of freedom of speech, we feel that the regulations should speak to the problem of sex bias in textbooks. We believe that many departments within the educational institution have existing mechanisms to review curriculum and textbooks and that procedures should be developed to handle specific complaints about sex bias in textbooks and curriculum. (81)

Despite these suggestions, HEW did not develop specific criteria for use in evaluation and selection of textbooks. This is a matter where individuals will have to attempt to exert influence at the local or state level. States such as North Carolina and Minnesota have adopted board policies to regulate against the use of sex biased materials.

First Amendment considerations have already been alluded to, and certainly the freedom of speech and freedom of the press doctrines are paramount concerns in America today. In fact, there are no government or state regulations for controls of the print media. Historically, these freedoms have been carefully protected. The FCC was established to control equal access to the air waves, a commodity considered to be of limited availability. The printing press, however, has been considered accessible to all. In reality today, though, newspapers have become much more limited than the airwaves. The number of newspapers has diminished considerably, and many of those surviving are under a virtual monopoly ownership. There is a single publishing monopoly in 96 percent of the cities with daily newspapers (68, p. 167). Consequently, people more and more are raising questions about the controlling influences held by these large publishers on the public.

The text of the Supreme Court ruling on right of reply printed in the June 26, 1974, *Des Moines Register* (117) reiterated the concept of freedom of the press very well. The issue under question in this case involved a request by a political candidate for right to reply to newspaper criticism of his record. The candidate argued that the "government has an obligation to ensure that a wide variety of views reaches the public." The Supreme Court ruled in favor of the press, stating ". . . we reaffirm unequivocally the protection afforded to editorial judgment and to the free expression of views on these and other issues, however controversial . . . no government agency—local, state, or federal—can tell a newspaper in advance what it can print and what it cannot."

The only exception by the courts has been to prohibit discrimination in job advertising by disallowing any specification of race or sex. That judgment was passed down in the 1973 Supreme Court case, *Pittsburgh Press Co.* vs. *Pittsburgh Commission on Human Relations.* Justice Powell delivered the court opinion, stating:

> Discrimination in employment is not only commercial activity, it is *illegal* commercial activity under the ordinance. We have no doubt that a newspaper constitutionally could be forbidden to publish a want-ad proposing a sale of narcotics or soliciting prostitutes. (6, p. 701)

Justices Burger, Douglas, Stewart and Blackmun all dissented in that decision, expressing First Amendment concerns. Justice Douglas said:

> The First Amendment does not require the press to reflect any ideological creed or political creed reflecting the dominant philosophy, whether transient or fixed. (6, p. 707)

Stewart remarked:

> And if Government can dictate the lay-out of a newspaper's classified advertising pages today, what is there to prevent it from dictating the layout of news pages tomorrow? . . . For I believe the constitutional guarantee of a free press is more than precatory. I believe it is a clear command that Government must never lay its heavy editorial hand on any newspaper in the country. (6, p. 709)

All of the above serve to indicate the sanctity of freedom of the press and the clear precedents that have been set for the preservation of that sanctity. Certainly any contemplated litigation concerned with sex-stereotyping would need to give consideration to the First Amendment mandates.

With due respect to First Amendment considerations, there may still be recourses available to individuals under the Fourteenth Amendment. A *Hastings Law Journal* article, "Teaching Woman Her Place: The Role of Public Education in the Development of Sex Roles," has offered possible lines of argument based on the following premise:

> Schools impose upon girls a restricting set of sexual stereotypes that discourage their aspirations and limit their sense of autonomy and self-image. This inhibits employment potentiality and violates their right to realize their individual potential as human beings. (116, p. 1191)

The Fourteenth Amendment applied to this premise brings forth the following charges:

1. denial of equal protection of the law, resulting in violation of the fundamental rights of education and employment
2. violation of the due process right to essential individual liberties. (116, p. 1191)

The elementary school is seen as a primary socializing agent and the site of the perpetuation of stereotypes as indicated by the previously cited studies of curricular materials. That socialization is indeed a recognized function of the school was stated in the opinion handed down in *Serrano* vs. *Priest*, 5 Cal 3d 584, 609-10, 487 P. 2d 1241, 96 Cal Rptr. 601, 619 (1971):

> Education is unmatched in the extent to which it molds the personality of the youth of society. . . . Public education actually attempts

> to shape a child's personal development in a manner chosen not by the child or his parents, but by the State. (116, p. 1196)

With that official function, then, one might question the nature of official approval given to sex-biased materials. The article cites the case of *Board of Education* vs. *Barnette,* 319 U.S. 624 (1943) for establishing the principle that actions of school officials fall within constitutional protection:

> The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all its creatures—Boards of Education not excepted. (116, p. 1202)

Although it was previously noted that the Supreme Court in the San Antonio case failed to recognize education as a fundamental right, this does not preclude state constitutions from making such an establishment. A case in point is *Robinson* vs. *Cahill,* 62 N.J. 473, 303A. 2d 273 (1973). The court ruled that under the New Jersey Constitution education is a fundamental interest, stating:

> Once the opportunity to attend public school has been extended to a student, he or she should be protected against invidious disparities in the quality and extent of educational opportunity found within that school. (116, p. 1206)

As the area of employment is explored, substantial Fourteenth Amendment case law can be found to support women against discriminatory practices. The *Hastings* article claims that it should be the court's concern to look deeper into matters of discrimination to determine why women are limited in their occupational choices, maintaining that it is the educational process which is the underlying problem (116, p. 1207). The *Hastings* article cites *Hobson* vs. *Hanson,* 269 F. Supp. 401 (D. D.C. 1967), aff'd. sub. nom. *Smuck* vs. *Hobson,* 408 F. 2d 175 (K.C. Cir. 1969, where the court ruled against a school's tracking system. Tracking assignments were correlated with race due to a cultural bias in the tests given. Even though the tracking prepared students to fill traditional roles (blue-collar), a reflection of the status quo, the court ruled against it.

The line of argument suggested by the *Hastings* article that "the process of sex role socialization violates a woman's basic human right of individuality and self-fulfillment" is built on an analogy to *Brown* vs. *Board of Education,* 347 U.S. 483, 494 (1954). The article maintains that "separation of children solely by sex 'generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.'" A call is made for the courts to examine the indoctrination process (116, p. 1215).

A line of cases is cited to support the thesis that the school's proper role is not one of indoctrination. These include:

1. *Meyer* vs. *Nebraska*, 262 U.S. 390 (1923)—found that it was unconstitutional to prohibit the teaching of foreign language below the eighth grade.
2. *Pierce* vs. *Society of Sisters*, 268 U.S. 510, 535 (1925)—which said in part, "the fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children."
3. *West Virginia State Board of Education* vs. *Barnette*, 319 U.S. 624 (1943)—where Justice Jackson said, ". . . no official, high or petty, can prescribe what shall be orthodox in politics, nationalism . . . or other matters of opinion . . . ."
4. *Epperson* vs. *Arkansas*, 393 U.S. 97 (1969)—which struck down a law prohibiting the teaching of Darwinism in the school. Justice Black's opinion implied that it was unconstitutional for a state law to espouse only one theory as true. Might not a parallel be drawn here to sex stereotyping? (116, p. 1218)

An alternative to the U.S. Constitutional challenge is the enactment of specific state statutes directed toward the prohibition of adoption and use of sexist curricular materials. Such a statute is on the books in California: California Stat. 1972, Ch. 929 Sec. 2 at 1843 (West Cal. Leg. Serv 1973) enactment as Cal. Educ. Code Sec 9240:

> When adopting instructional materials for use in the schools, governing boards shall include only instructional materials which accurately portray the cultural and racial diversity of our society, including: a) The contribution of both men and women in all types of roles, including professional, vocational and executive roles.

The statute further proscribes the adoption of any text which contains "any matter reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex, or occupation" (166, p. 1222).

California law provides that criteria for textbook evaluation be developed (Sec. 9404) and that representatives of ethnic and minority groups be a part of the task force to advise the Curriculum Materials Commission (Sec. 9405). Women should fit into this category. The statute also allows for the possibility of developing new material should no satisfactory material be available from other sources (Sec. 9481). This would be an outlet for the development of non-sexist materials (116, p. 1223). Unfortunately there has not been much evidence of active practice of the provisions of this statute. Should the enforcement be supported by the clout of threatened cutoff of funds, such measures could become extremely effective.

Even though newspapers are well protected by the First Amendment, there seem to be some unanswered questions which could lead to litigation. The 1971 *Albany Law Review* discussed freedom of the press on college campuses and made the following statements:

> The extension of freedom of the press on campus due to recent court decisions based on first amendment rights of students must be constantly tempered with the reminder that, unless the publication can find independent financing, such freedoms may only be academic. The power of administrators to withhold funds has been challenged in court only in *Antonelli,* 308 F. Supp. 1329, 1336 (D. Mass 1970), and the ruling is vague on this point. If it were specifically challenged, it would probably be upheld on the ground that administrators may allocate their funds as they deem necessary. (67, p. 181)

If indeed that reasoning is sound, one might argue that with sufficient pressure, women on campus could force changes in newspaper policy to provide for equal and objective coverage of women's activities on campus. If, for instance, a school newspaper continued to neglect to cover women's sports, could not the withholding of funds be forced by application of pressure to the administration?

There is currently a case before the State Department of Human Rights in Minnesota regarding the use of Ms. and women's first names in the Rochester newspaper. The Rochester Human Rights Commission ruled that a newspaper's practice of identifying married women by the husband's name was illegal sex discrimination in violation of the Minnesota Human Rights Act. The suit is being brought by NOW and the BPW (Business and Professional Women), and expectations are that the matter will have to be resolved by the courts. The groups do not consider this a First Amendment question since they are not interfering with the newspaper's right to print news (32, p. 3, August 1, 1974).

A similar concern was expressed by 75 women who went to the *New York Times* to discuss the editorial treatment of women in the news, specifically in terms of the use of Ms. The editors did not consider Ms. widely accepted among their public and refused to change, further stating that readers could not be permitted to set the style and tone of the paper (32, p. 1, April 1, 1974).

The Women's Rights Project of the ACLU advocates "encouragement and informal pressure rather than direct sanctions" due to free speech implications. Some informal pressures have resulted in changes by textbook publishers. Scott, Foresman and McGraw-Hill have issued guidelines for improving the image of women and eliminating sex bias in materials (27, 19).

In Minnesota, a State Sex Bias Task Force Report recommended that the State Department of Education:

> Send letters to publishers saying all Minnesota school districts will be guided not to purchase any materials which have not eliminated sex role stereotyping.
>
> Enclose a copy of the evaluation criteria to be used.
>
> Request publishers to submit information on the distribution of female/male pictures, stories, and pronouns when sending materials to schools for review or purchase. (32, p. 3, August 1, 1974)

In North Carolina, the Ad Hoc Committee for the Improvement of the North Carolina Textbooks Process recommended that the state adopt a portion of a Florida law forbidding schools from using materials that show race or sex bias (73).

BROADCAST MEDIA

As mentioned previously, the broadcast media are subject to government control through the Federal Communications Commission, which grants licenses to stations provided they operate "in the public interest, convenience, and necessity" (26, p. 149). It is the Fairness Doctrine of the FCC which states that a station must present both sides of a controversial issue and that important public issues must be covered. This has been applied in the past to civil rights, pollution and tobacco, but not directly to women's issues, although such an application appears to be within the realm of the doctrine. The ACLU (26) has urged that women demand to be treated more fairly and in broader roles, citing the amount of unknown harm that may have already been done psychologically to children who have seen only the one-dimensional role models portrayed by the media.

Under the doctrine of community ascertainment, community needs must be surveyed. Groups within the community have three rights in this area: recognition, consultation and responsive programming (115, p. 22). The significance of a group may not rest solely on size, but on lack of influence in the community as well (115, p. 24).

FCC decisions of *City of Camden*, 18 FCC 2d 412, 16 P&F Radio Reg. 20 555 (1969) and *Santa Fe Television, Inc.*, 18 FCC 2d 741, 16 P&F Radio Reg. 2 D 934 (1969) both assumed women to be a separate group entitled to broadcaster recognition (115, p. 25). In the Camden case, Commissioner Nicholas Johnson pointed out that contact with only one woman did not constitute a representative sample (22, p. 627).

Several monitoring studies have been done by various groups to illustrate the distorted and disproportionate roles assigned to women in media programming. The most thorough study of television programming as it reflects the role of women was done by the National City Area Chapter of NOW (89). The station WRC-TV in Washington, D.C. was monitored for a composite week with extensive evaluation done of commercials, soap operas, children's programming, entertainment shows, public affairs, sports programming, quiz shows, dramatic programs and variety shows. In every instance men dominated in major roles, time on the screen, status positions, occupation and expertise. Traditional stereotypes were rigidly reinforced.

More such monitoring reports need to be done and filed with the respective local stations, broadcast networks, the FCC and the press. Sports would certainly be a key area for analysis. Although the legal processes for actual petition to deny a license renewal can be complicated, time-consuming and expensive, the channels for change are clearly outlined, and it is in the public interest to follow these to completion. Frequently stations have settled agreements out of court rather than counter the petition in court.

The ACLU recommends the following steps for raising the issue of violation of the Fairness Doctrine:

1. Write the broadcasting station protesting a particularly offensive and one-sided view of some feminist issue.
2. Identify the program, explain that the fairness standard has been violated.
3. State the issue as you see it—why you believe it is controversial and of public importance.
4. Request that the other view be presented.
5. If the station takes no action, file a formal, legal complaint with the FCC.
6. Send a copy of all correspondence to the FCC with a separate letter or complaint. Cite name of station, date, and time of broadcast.
7. If the FCC remains unresponsive, review the fairness issue in a legal proceeding to deny the station its license renewal. (26, p. 154)

An excellent means of keeping current with actions, protests, pending cases, and progress toward change is through the monthly report, *Media Report to Women* (32). The July 1, 1974 issue reported on a victory by Colorado women after complaints were filed with the FCC to deny license renewal for KWGN—TV. An agreement reached with the station resulted in a withdrawal of the petition to deny. Section 9 of that agreement identifies some of the key issues:

> KWGN—TV agrees to refer to females over the age of 18 as "women" instead of "girls" and to identify women reported in the news initially by their professional rather than by their marital status, unless such women indicate a preference to the contrary. The station additionally agrees to frequently record KWGN—TV produced public service announcements with female voices. In this connection, the station will encourage community groups to utilize women in announcing and on-camera appearances on public service announcements . . . . Also, KWGN—TV agrees to telecast at least 150 public service announcements involving the National Organization for Women or other such community groups. KWGN—TV pledges to promptly inform advertisers and advertising agencies about any criticisms received concerning offensive or stereotyped roles performed by women or minorities in such commercial messages. (32, p. 7, July 1, 1974)

Houston women reached a similar agreement with KPRC—TV (32, p. 11, August 1, 1974).

A victory for the black minority may well have increased possibilities of influence for changes by the media toward women as well. The FCC has tentatively decided not to renew the license of the Alabama educational television system for failure to broadcast shows for black audiences. If upheld, the action will represent the first time the FCC has denied a license renewal on the basis of such complaints (61).

Title IX does apply to public broadcasters since they serve as educational stations, and it is conceivable that federal aid could be discontinued should sex bias be found. Studies of the famed "Sesame Street" for children reflect similar stereotyping as found elsewhere. Whitney (124) monitored 10 programs and found that the program's characters include seven live males to two live females, and 10 male Muppets with given names to some unnamed female Muppets who appear only occasionally. Big Bird is asexual, but a poll of more than 40 children reported it as a male. The overall ratio of male to female portrayals ranged from 5 to 1 to 11 to 1.

A master's thesis by Rita Dohrmann (56) looked at children's television programming as a sex-socialization agent. Among her findings was, "The male sex is the most visible gender symbol on children's television with its 78 percent share of all characters compared to its real life 49 percent share of the population." She also found that " . . . the cultural values of active mastery were uniformly given to males and those of passive dependency to females . . . . The child male was almost always significantly more masterful than the adult female."

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SOCIAL ACTIONS AND ATTITUDES

Certainly the message transmitted by the print and broadcast media has a significant impact on their readers and viewers, but the actual model represented by the teacher or coach is of even greater significance in influencing the student.

The problems of stereotyping in elementary school physical education and sports programs have been pointed out by Ulrich (121) and Larson (83). Activity differentiation which provides football for boys and folk dance for girls has been labeled unjustifiable. The argument claiming girls' lack of interest in aggressive activities can hardly be defended when girls have not had the opportunity to learn to enjoy such activities. Ulrich particularly criticized the reinforcements that teachers give to traditional sex role expectations by such comments as, "but Steve, some girls can hit baseballs as well as boys," and "let's have three strong boys to move this equipment" (121, p. 113).

Common practices in physical education classes which reinforce traditional sex role and stereotyping are evidenced in such practices as:

- having separate lines and separate teams for girls and boys
- altering the rules for girls
- playing games with stereotypical male and female characters, e.g., "Old Mother Witch," "Mr. Fox"
- using sexist terminology, e.g., man-to-man defense rather than "player to player"

That children have definite attitudes toward the appropriateness of activities for boys and for girls and toward the performance level of boys and girls was clearly shown in a study by Geadelmann (17). She interviewed 322 children in grades kindergarten through six and found stereotyping across all grade levels. The majority of the total associated a football, golf clubs and a basketball with a boy and roller skates and a jump rope with a girl. They felt that a boy would excel in tennis, swimming, throwing, running and jumping, and named the girl as excelling only in doing a cartwheel.

The comments made by teachers and coaches which reflect an opinion or value judgment of one sex or the other can have a profound effect on the students' attitudes, and it behooves those in leadership positions to exercise particular caution against such prejudiced or biased statements. To the contrary, coaches and teachers should find ways to offer opportunities, alternatives and options to all students regardless of their sex, and to make such things available in a manner which denotes acceptability.

SUMMARY

That sex role stereotyping and differential treatment of persons based solely on sex is practiced and perpetuated by both print and broadcast media has been illustrated and documented. Several alternatives for action have been discussed: litigation based on the Fourteenth Amendment of the U.S. Constitution; litigation based on Title IX; enactment of state statutes prohibiting such practices; influence on publishers, school boards and textbook committees exerted in an informal manner rather than through formal legal action; litigation based on FCC policies; and informal influence on broadcasters to become more responsive.

No alternative represents a magic solution. No singular action will be a panacea for all the problems in this sensitive area. Gains have been made, however slight, through each of the alternatives identified, and the probability is that a combination of these alternatives will be required to instigate further change.

In terms of litigation, the concept of indoctrination of a particular theme into youngsters through required education and publically purchased curricular materials would seem to pose a legitimate challenge to existing practices. A major court decision in this area would probably influence the most rapid changes by school districts and publishing companies as well. However, even if legal mandate were achieved to prohibit the use of sexist materials in public schools, it would be meaningless unless sufficient enforcement procedures were activated.

At the same time, preservation of freedom of the press should be of paramount concern. Rivers and Schramm describe the dilemma very well:

> The chief danger in trying to combine freedom and responsibility is that the mass media may lose sight of their basic responsibility, which is to remain free . . . . The mass media are pressured by governmental and social forces which view responsible performance from special, and sometimes selfish, perspectives. Depending upon where one stands . . . it is possible to argue that almost any action is responsible or irresponsible. (25, p. 53)

Another concern which is perhaps somewhat less openly spoken but perhaps more widely felt is spoken to by Barbara Cavanagh:

> Resistance to reevaluation of the feminine role and nature is often based on the fear of a sterile, Brave New World variety of unisex women—Brunhilda in the men's room, wearing hobnailed boots. This misconception is likely to produce only that result which it

> fears. The abandonment of a false, demeaning mythology about males and females does not mean that poetry need be erased from life. (37, p. 287)

Sex role stereotyping by print and broadcast media is a serious, but not impossible, issue. We do have legal recourses available as well as our own resources as human beings. For as a people who have historically treasured freedom, we have also historically acted to protect that freedom. It is uncomfortable to be characterized inferior because of sex, it is disturbing to be ignored by the press, and further, it is dangerous to have these oppressions perpetuated. To be free we must act on our freedom, whether that be by litigation, formal protest or personal influence.

CHAPTER VII

Effecting Change

Christine Grant

Introduction

This chapter is divided into two sections. The procedures presented in the first section, "Effecting Change Through Established Channels," may prove sufficient to bring about the desired changes at an institution. However, at institutions where administrators are less than enthusiastic about the concept of equality for women, additional procedures may be necessary. These are presented in a second section, "Effecting Change Through Alternative Procedures."

It is advisable to tackle the problem of inequality first through established channels and then through additional procedures, starting with the least radical measures. Obviously harmonious working relationships within the institution should be retained if possible. Decisions on which strategies to use and when to use them are therefore of the greatest importance. Consequently, the plan of attack will vary among institutions and the success will largely depend upon the good judgment of the institutional organizer(s).

The opportunity to initiate and effect change in physical education and athletics has been simplified by the provision in the Title IX Regulation which requires each institution to conduct a self-evaluation of current policies and practices affecting students and personnel in educational programs (48). The aim of this requirement is to have institutions identify and rectify any policies or practices which do not comply with Title IX Regulations. This self-evaluation, which is mandatory for *all* educational institutions, to have completed by *July 21, 1976*, must be kept on file for three years. The public has the right to see the self-evaluation report at any time and may make inquiry to HEW regarding its progress.

EFFECTING CHANGE THROUGH ESTABLISHED CHANNELS

Leadership to Effect Change

The intent of the recent legislation was to improve opportunities for girls and women and to achieve equality of treatment of all people.

However, progress toward these goals will be slow unless women are prepared to *act*. The machinery for change has been created; all that is needed is an organized plan of action to cause the machinery to work.

This situation necessitates realization of the following:

1. On each campus someone involved in physical education and/or athletics must assume the leadership role in order to effect change in these areas.
2. All physical educators and/or coaches interested in effecting change must get out of the gymnasium. While the positive results will be seen there, the important decisions which produce these results are made elsewhere. The task is to determine where such decisions are made and to participate actively in and/or strongly influence the decision-making groups.
3. Change is not effected by screams of "discrimination" but through an organized plan of action preceded by thorough preparation.

Preparation Period

Because of the self-evaluation requirement in Title IX, it is possible that the administrators at many institutions have already created a working group charged with the task. The ideas suggested in this chapter may help provide direction for this group. Where no such group has yet been created, the initiative must be taken by the leaders in physical education and/or athletics. The institution may well be appreciative of the services of a dedicated group already active. It is also possible that the institution's self-evaluation team may require assistance in the specific areas of physical education and/or athletics; hence, the availability of this special "subcommittee" may well prove invaluable. Whatever the situation, those truly concerned with physical education and/or athletics must ensure the existence of an avenue for input into the self-evaluation report and closely monitor progress toward the goal of equality in the immediate future.

Creation of Working Group

The achievement of maximum success in the shortest possible time is largely dependent upon the strength and focus of the core group that initiates and directs the plan of action. It seems advisable to have a working group comprised of people vitally concerned with the physical education and/or athletic situation specifically rather than a coalition group that is concerned with equality for women generally. In schools and colleges where there are only one or two women in physical education and athletics, it may still be possible to enlist other faculty members willing to work toward the correction of the inequalities in these specific areas. In larger schools and colleges, the creation of a dedicated core group should be easier. Input and support from other campus and community personnel could prove valuable at a later date.

Once formed, the core group's first function must be to establish goals—immediate, intermediate and long-range—and to establish a time-table for the accomplishment of these goals.

Legal Preparation

One of the essentials for the group must be for all to become fully cognizant of the laws which can be used to support the cause of equality. (See Chapter III for a complete discussion.) It is also important, particularly with Title IX Regulations that the effects or results of the institutional policies be studied since such policies may be in compliance with the letter of the law while the intent of the law is being disserviced.

Information Gathering Outside the Physical Education or Athletic Program

Another goal of the group must be to determine and understand the power structure within an institution. In the past, women have had little or no access to the power structure and currently many are uncertain of how to cope with the unknown. In reality, it is not a difficult procedure for a determined group, and it is an essential step toward effecting change. For those requiring assistance in this matter, the following suggestions may be helpful:

- Obtain and study the institution's organizational chart (generally available in the operations manual of the institution). Most public schools have equivalent manuals and only where they are not available will it be necessary for the core group to create an organizational chart.
- Put names to key positions.
- Learn as much as possible about key people.
- Determine who primarily holds the power in the institution (not always the person in the top position).
- Determine who holds the purse strings.
- Establish the lines of communication up to the key people.
- Determine to whom these key people are responsible.
- Determine their attitudes toward physical education and/or athletics.

- Find out the written purposes of the institution and determine where physical education and/or athletics fit with such purposes.
- Be aware of the priorities of the institution (in theory and in fact).
- Know where positive support can be expected.
- Anticipate who is likely to be a roadblock and establish possible detours.
- Determine which are the key committees on campus.

Obviously the larger the institutions, the more challenging is the task, but it is absolutely essential for the group to be cognizant of the entire picture and to be well briefed on the key people in the structure.

To obtain this kind of information and to make people aware of inequalities in physical education and athletics, members of the core group should also attempt to do the following:

- Develop a general interest in the entire institution.
- Study the institutional manual.
- Get to know faculty in other departments.
- Get to know established and experienced faculty members.
- Become acquainted with the affirmative action officer.
- Volunteer for key institutional committees.
- Attend what appear to be important meetings on campus.
- Be observant and perceptive—get into the habit of assessing the power of individuals on campus.
- Join campus and/or community groups that could contribute to information-gathering or which could give possible support to the cause.
- Be subtle—this is a preparation period, not an action period and should be seen as the time to solicit support for the future and to educate acquaintances regarding physical education and/or athletics.

Obviously, this entire project necessitates that physical educators and/or coaches move outside the gymnasium. Involvement in the power game is a necessity and rules of the game must be learned.

Information Gathering Within the Physical Education or Athletic Program

Concurrent with the information gathering period outside the program, there must be an internal information gathering session to collect facts for a thorough and comprehensive report. Such a report should include:

- the history of the program

- the present state of the program (including factual data on current areas of discrimination)
- where the program hopes to go (suggested remedial plans with goals and a timetable to eliminate areas of discrimination)
- suggestions for the periodic review of progress toward equality.

Such information is the heart of the report. The report must be accurate and thorough—the more facts, the more chance of success. This is the most vital and crucial step of any plan of action.

The following suggestions may assist with the compilation of a solid report:

- Delegate the work of information gathering to all members of the group (although in some instances, this massive job may have to be done by one person).
- Start with a one- or two-day "think-in" by the core group to compile notes and ideas which will create the foundation for the thorough analysis and evaluation of the program. The objective is *not* to write the report but to organize the general outlay and to decide who will be responsible for obtaining the facts. A later meeting can determine the direction in which the program should go, i.e., the long-range goals and "dreams."

Report Outlay: Possible Areas for Study

To ensure that all aspects of the physical education/athletic program are covered, the core group should first identify general areas for study and then delegate a person or persons to research each area. A suggested outlay which may be helpful to the group is as follows:

- Introduction, i.e., need for study
- Brief history of program
- Current status of program:

  —philosophy
  —administrative structure
  —strengths
  —weaknesses

- Comparison with men's department or program

  —administrative comparison, e.g., governance, amount and sources of funding, number of students serviced*
  —faculty and staff comparison, e.g., number in decision-making positions, salaries, ranks, release time, teaching loads, support

services, summer school employment, office areas*
—student comparison, e.g., facilities, equipment, etc.
—policies and practices comparison

- Recommendations:

  —areas requiring immediate action
  —areas requiring action in immediate future
  —areas requiring action in future

- Timetables for proposed changes
- Proposed plan to monitor progress

General Suggestions for Report

- Establish the purpose of the report, e.g., exposure of inequitable situation to administration and/or concerned public, media and government agencies.
- Be accurate, frank and objective with regard to the current situation and to proposed changes. Be positive, when possible, and have concrete suggestions (possibly several alternatives) to remedy each problem area. Be imaginative, creative and receptive to new ideas when dealing with the future of the program. Create a thorough yet concise and readable document which is well organized and well thought-out. Present a professional-looking report.
- When dealing with the area of recommendations which also determine the desired direction for the program, it would be wise to use the entire group for a brainstorming session to ensure agreement regarding the program's basic characteristics.
- Have two or three of the best writers in the group actually write the report, which can then be resubmitted to the group for suggestions and comments.
- Set realistic deadlines for completion of the various research units and attempt to hold to these deadlines.
- When the first draft is completed, the group may wish to solicit suggestions/comments from influential people who are likely to be supportive. Input from outside departments which do or could contribute to the program might also be sought.

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*For more detailed aspects, refer to the checklists in Chapter II. It should also be noted that institutions cannot deny individuals access to records, e.g., budgets, salaries, etc., although it may take considerable effort to locate them.

Action Period

Distribution of Report

When the report is completed, copies should be distributed simultaneously to the key people at the institution through the normal chain of authority in addition to selected individuals. In the cover letter a suggestion can be included that selected persons from the group are or will be available for a meeting to discuss the report.

At this time, it might be wise not to seek media coverage of the report since those in authority may be antagonized by this attempt to go outside the proper channels. Moreover, it may be possible to achieve the goals of the group without external pressure.

Meeting with Administrators

This meeting should be between the key people in the power structure and selected members of the core group. It would be advisable to have two or three articulate members as spokespersons since a single individual can be subdued more readily by those in power. The representatives should have formulated specific goals to be accomplished during the meeting and, dependent upon the situation, these goals may be:

- recognition of the core group as the committee to deal specifically with equality in physical education and/or athletics
- recognition of the core group as a subcommittee of the institution's general self-evaluation team
- creation of an institutional self-evaluation team with the group's spokespersons to be concerned specifically with physical education and/or athletics
- establishment of regular meetings with the administrators to plan for the implementation of the proposals in the report.

A calm approach to the meeting is recommended, for the law is on the side of the group and the discriminatory facts will speak loudly for themselves. In addition, the administrators are well aware of the institutional vulnerability of this issue. There is no question that if administrators desire to eliminate discriminatory practices, the report should be sufficient to effect change. However, if they are reluctant or opposed to change, other strategies should be employed immediately to ensure no loss of momentum in the move toward equal opportunities for and equal treatment of the female student in physical education and/or athletics.

EFFECTING CHANGE THROUGH ALTERNATIVE PROCEDURES

Because some administrators will "drag their feet" on the problem of equality, it may be necessary to encourage faster progress by some of the following means:

Creation and Activation of Support Groups

1. Students, faculty, parents, etc., who complain of inequality should be urged to put their complaints into writing and send copies to the administrators. If several students have complaints, it may be effective to have them request a direct meeting with those in power. Administrators tend to listen to students.
2. Relationships with the media should be established, and current information and progress should be readily available to them. While details of the report may not be submitted for publication at this time, there is nothing unethical about admitting that a report has been submitted and that a meeting with the administrators is likely to occur in the near future. A positive comment might be added that administrators will want to take immediate corrective action against discriminatory conditions. A suggestion that the media obtain comments directly from central administrators would be in order.
3. If actions by administrators are still not forthcoming, the complete report might be released to the media. It should be noted that the law will protect individuals from recrimination (see Chapter IV); however, working within the committee structure helps alleviate individual anxiety in this manner and creates more pressure upon administrators since they tend to listen more quickly and intently to a group than to a single individual.
4. A petition itemizing concerns can be circulated to outside pressure groups as well as to students, parents, faculty, etc. Precautions should be taken to ensure that the petition is valid, signed with names, addresses and telephone numbers or identification numbers. Send the petition to key people.
5. Members of the group should be available to speak to any campus or community group which could be of help, e.g., PTA, NOW, WEAL, ACLU, AAUP, AAUW, physical education associations, alumni, Women's Resource Centre representatives, etc. (See Chapter IX.) Assistance from the elected officers of such organizations should be sought and appeals made to parents on behalf of their children and to women's groups on behalf of female students and faculty.

A flow of letters from such people is likely to be given prompt attention, *especially* if the copies are also sent to the superiors of the administrators, e.g., the board of trustees or the board of education.

6. If a meeting with the administration is eventually called because of the pressure from groups other than the committee, it may be advantageous to portray a "reasonable" rather than a "radical" approach. It may also be valid to elaborate upon the "caught in the squeeze" situation that the group finds itself in, i.e., pressure from below (students) and from all around (women's groups, parents, etc.). Preparation should be made to offer concrete steps to rectify the situation. If there is any tendency toward tokenism as a solution to the immediate situation, a suggestion that a faculty committee be formed immediately to study the entire situation would be in order. Suggestions of strong faculty members who are likely to support the cause and who are also likely to be acceptable to the administrators should be made. The composition of the committee is vitally important.
7. Once the ball has started rolling, it is essential to keep the momentum going; therefore, at the first sign of a slow-down in progress, the letter-writing campaign should be re-activated. A steady stream of phone calls to the administrators asking for a report on the progress or a copy of the self-evaluation document may be required.
8. Organizing a public hearing may be a viable option. A recent ACLU publication made the following suggestions for organizing such a hearing:

    - Attempt to have several groups cosponsor the hearing to encourage a broad base of interest and potential support.
    - Invite and attempt to ensure the presence of administrators, the general public, the media and public officials.
    - Offer a varied, orderly and balanced program, and ensure that a wide range of opinion is offered.
    - Have speakers focus on different areas, e.g., on discriminatory practices in athletics, physiological data on the female athlete, the growing interest in women's athletics.
    - Have a community leader chair the meeting.
    - Set a well-located and neutral area for the meeting.
    - Publicize the hearing well.
    - Prepare and distribute a position paper with information on how to contact your group.
    - Encourage membership in your group by sending follow-up letters. (31, sec. 10)

9. Organizing a public demonstration is another possibility. The previously-mentioned ACLU document suggests the following:

   - The selection of a suitable action, e.g., picketing during important meetings or events, boycotting activities, or withholding fees which permit continued discrimination
   - Selection of target, e.g., administrators, athletic department, public officials supporting the status quo, an agency not enforcing compliance
   - Cohesion, e.g., leadership tactics prior to, during and after the demonstration
   - Publicity for demonstration, e.g., prior publicity, on-scene fact sheet
   - Transportation arrangements, e.g., having groups arrive together
   - Media coverage in advance and on the scene
   - Obtaining permit through police department or local agency (31, sec. 10)

10. If adequate progress toward equality is still not evident, a powerful letter-writing campaign should be initiated to the representatives in Congress to inform them of the concerns and areas which should be investigated. It should be noted that each Congressional representative tends, on the average, to hear from only 100 out of an average of 400,000 constituents. Hence, an organized letter-writing campaign from any area on any issue is likely to have an effect.
11. Although legal action should be the final recourse, because of the amount of time required for the investigation of the complaint, one may not wish to wait until all the other avenues have been exhausted before taking this action. In brief, a charge should contain:

    - The names of the complainants
    - The laws that are being violated
    - The nature of the discrimination (this can be taken directly from the report, but should if possible be detailed, i.e., specific dates, figures, etc.).
    - Specific reference to any pattern of discrimination against the class of women
    - Supporting data on women in general, e.g., growing interest, physiological facts, growing opportunities elsewhere
    - Proposed remedies (can be taken directly from the report) (31, sec. 9)

12. During an HEW investigation, the following suggestions should be noted:

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- Ask the regional HEW office to notify your group when a visit is planned.
- Suggest that your group be utilized as a resource group.
- Have copies of the report showing discriminatory policies/practices and recommendations for rectifying the situation.
- Meet the investigators and encourage supportive individuals/groups to do the same.
- Decide whether a representative of the press would be advantageous to have at the investigation; weigh this action carefully.
- Obtain the HEW reports and submit comments on it (31, sec. 10).

In conclusion, it should be noted that *equality* is the goal, and knowledge of the entire situation and appropriate laws will constitute power with which change can be forced.

CHAPTER VIII

Remedial and Affirmative Action

N. Peggy Burke

Introduction

The Executive Order and Titles VI, VII and IX have as a central focus non-discrimination against women and/or minority groups. In addition, the Executive Order, and to a lesser extent the other laws, have as a second major concept an affirmative and remedial action provision. Non-discrimination can be thought of as a "from this day forth" ban on discriminatory policies. However, affirmative and remedial action, the focus of this chapter, require more than this benign neutrality.

The following discussion will deal with affirmative and remedial actions only as they apply to females. For all practical purposes, the regulations and reactions to the regulations are the same for minorities and women. Although sex is not included in Title VI, references to this law are included because it does apply to minority women.

THE CONTROVERSY

Few, if any, aspects of the civil rights legislation of the past two decades have created more controversy and resulted in more misunderstanding in educational communities than the concepts of affirmative and remedial actions. As has frequently been shown to be the case, many "long-distance" liberals became "up-close" reactionaries as the affirmative and remedial action provisions were extended to women as well as to minorities and expanded to include the practices of educational institutions and not just those of the groups to whom they let contracts. Members of academic communities who had supported affirmative hiring and employment practices being imposed on those who built the buildings, took a more jaundiced view when the same provisions were applied to those employed within those ivied walls.

Cries of "reverse discrimination" and "lowering of standards" became commonplace; "goals" became mistaken for "quotas"; and groups of professors organized on both sides of the affirmative/remedial issue.

Misinterpretations or willful distortions of the law resulted in some white male candidates being told that they were being denied employment because the institution or department "had to hire a woman,"

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and some white male students being told that they were being denied admission to professional schools because federal law required that a certain percentage of the entering number "had to be female." As a result of such distortion, much resentment against women has been generated and several legal actions charging reverse discrimination have been initiated.

HEW, the enforcing agency for educational institutions, has become a part of the controversy. It has been assailed by the one group for being unreasonable in its askings on behalf of women and criticized by women's advocacy groups for failing to enforce its own policies.

In hopes of dispelling some of the myths surrounding affirmative/remedial action, the writer offers the following information.

THE FACTS

1. *What is affirmative action?*

Affirmative action is action permitted or required to overcome the effects of conditions which have resulted in limited inclusion or advancement of one sex. It requires the institution to do more than ensure neutrality or non-discrimination with regard to sex; rather, it requires additional efforts to recruit, employ and promote qualified females. It is positive action undertaken to overcome the effects of systemic institutional forms of exclusion and discrimination.

2. *How does this differ from remedial action?*

Remedial action is corrective action required to overcome the effects of past discrimination. If there has been a finding of discrimination under the Executive Order or under Titles VI, VII or IX, specific corrective action tailored to the specific wrong that has occurred, is required. Back pay awards are authorized and widely used as a remedy under Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963 and the National Labor Relations Act. Evidence of discrimination that would require back pay as a remedy is referred to the appropriate federal enforcement agency if the Office of Civil Rights is unable to negotiate a voluntary settlement with the institution (9, p. 11).

To assure opportunities for the equal advancement of women, an institution may volunteer or be required to initiate remedial job training or work study programs geared toward upgrading specific skills. This is generally applicable to non-academic employees but may also be relevant to academic employees in terms of having opportunities to participate in research projects and sabbatical or leave programs sponsored by the institution (9, p. 9).

In institutions where in-service training programs are one of the ladders to administrative positions, remedial action must be taken if women have previously not had equal opportunities to enter such programs.

3. *How does one know whether affirmative action is required or permitted at a given institution?*

The Executive Order, as amended, *requires* affirmative action programs by all federal contractors and subcontractors, including institutions of higher education holding federal contracts. Institutions with contracts worth more than $50,000 and involving 50 or more employees must develop and implement *written* programs of affirmative action. This requirement was extended to include educational institutions in January 1973. Failure to follow the requirements of the Order can result in delay, suspension or termination of contracts.

Affirmative action is not automatically required under either Title VI of the Civil Rights Act of 1964, or Title IX of the Education Amendments of 1972, but can be imposed after a finding of discrimination. Voluntary affirmative action is also permitted under both acts. The ACLU has attacked this "permissive" characteristic of Title IX as violating the spirit of the law and has stated that affirmative and remedial action ought to be required, regardless of whether or not there has been a finding of discrimination (31, sec. 4, p. 5). While the Executive Order is extended only to institutions which are federal contractors, Titles VI and IX reach all educational institutions which receive federal financial assistance in *any* form—from research grants to support of school lunch programs.

Title VII, as amended, covers the employment practices of all private employers of 15 or more persons and all public and private educational institutions, whether or not they receive federal funds. Affirmative action is not required under this act unless there is a finding of discrimination (84).

Some states and local school systems may also have laws or regulations requiring the development of an affirmative action program.

4. *What areas are included under the affirmative action provisions at a given institution?*

That depends upon which of the federal laws is applicable at the institution and whether there has been a finding of discrimination against the institution. The federal regulations generally cover one or more of the following: employment, programs and activities, and admissions.

Affirmative action in employment is required at institutions subject to the Executive Order and in institutions found to be in violation of Titles VII or IX. (Under Title VII, unions as well as institutions are covered.) Title IX further allows all educational institutions to take voluntary affirmative action in the area of employment. Affected institutions must look at all of their employment practices from recruitment through retirement, including salaries, promotions and fringe benefits.

Program opportunities for students would require affirmative action under Titles VI and IX if a finding of discrimination had been made against the institution. Institutions may also initiate voluntary affirmative action such as making special efforts to recruit or train women in athletic training, athletic administration, coaching, etc.

Admission policies are covered only by Title IX and while this law calls for an end of sex discrimination in admissions, it does not require affirmative action unless there is a finding of discrimination. Voluntary affirmative action is permitted and schools, therefore, can make special efforts to get females into schools and/or programs to which they have previously had limited access.

5. *What are the obligations of the institution regarding the development of an affirmative action program?*

An institution or school system is required to file a *written* plan if (a) it is covered by the Executive Order as amended, (b) a state law or regulation requires such a filing, or (c) it has been ordered to file a plan as a corrective measure for federal agency findings of discrimination (86, p. 3). If such a plan is required, it must be signed by the executive officer of the institution or school and this person is ultimately responsible for it.

The discussion which follows refers to the requirement under the Executive Order. A state requirement or federally required corrective measure may vary in some specifics, but is likely to be basically the same.

The affirmative action plan must be completed within 120 days from the beginning of the contract and made available to HEW at its request. A report of the results of such a program must be compiled annually. The program and its results are also evaluated as a part of compliance review activities.

In addition to the above requirements, there is a stipulation that if a contract is for one million or more dollars, a pre-award clearance must be conducted 12 months prior to the award. The institution must be found to be in compliance or able to comply as the result of the submission of an acceptable affirmative action plan (9, p. I, 1).

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HEW states that an executive of the institution who is sensitive to the problems of women and minorities should be appointed as director of equal employment opportunity programs and be given the necessary authority, support and staff to execute the assignment.

HEW also suggests that faculty members and supervisory personnel help develop an institution's affirmative action program, and many institutions have set up such task forces or commissions. It is vital that all individuals with responsibility for recruiting, selecting and assigning employees understand the plan and its implications, and that the institution make its affirmative action plan available to interested persons. Once the plan is requested and received by HEW, it is subject to disclosure to the public except for confidential information about employees.

The National Education Association suggests that institutions voluntarily develop an affirmative action plan as a progressive employment practice, and that progress reports on such plans, whether voluntary or required, be made to employees and all interested persons regularly (86, p. 9).

At institutions where collective bargaining agreements exist, the affirmative action plan must be consistent with the agreement since both the institution and the employee organization are legally responsible for discriminatory practices.

6. *What information is required for the development of this program and how may it be obtained?*

Affirmative action plans must contain a work force analysis, a utilization analysis and detailed action-oriented programs (47). Each affected institution must undertake such an analysis of its employment situation and practices as a whole and for each department or employment unit. All jobs must be classified by duties and responsibilities involved. Rates of advancement and salaries must be included as well as an indication of whether the holder of the job is male or female, minority or white. Minority group females are counted both as members of minority groups and as females. However, when numerical goals are established, they must be listed as one or the other, not both. Regarding female employees, the analysis will allow the institution to determine the proportion of its total work force that is female, their job and salary levels, and in what administrative units they tend to be adequately or inadequately represented.

The institution is also required to analyze its hiring practices for the past year, including recruitment sources and testing procedures, as well as its promotion and transfer policies.

To determine the availability of women, the institution must next attempt to ascertain the proportion of the "labor pool" comprised of women possessing various skills. The demographic data needed to develop these estimates can generally be secured from women's advocacy groups, the Census Bureau, the Bureau of Labor Statistics and the Women's Bureau of the Department of Labor, as well as the many disciplinary associations and professional groups. The Project on the Status and Education of Women of the Association of American Colleges has a number of publications listing directories for women generally and minority women specifically (97, pp. 101, 104-105). The Commission on Human Resources of the National Academy of Sciences annually publishes a "Summary Report of Doctorate Recipients from United States Universities," and the U.S. Office of Education annually publishes a booklet of "Earned Degrees Conferred."

The geographic area from which an institution can be expected to recruit varies with the job classifications. The recruiting area for noninstructional jobs is usually the labor area surrounding the facility or any larger area from which the institution can reasonably recruit. For a laborer, this is generally a reasonable commuting distance. For faculty and high level administrative jobs, the recruiting area is generally national or perhaps even international.

Once the work force and utilization analyses have been completed, the institution is able to determine whether women are being underutilized. Underutilization is defined as having fewer women in a particular job classification than would reasonably be expected by their availability (55). If underutilization is evident, the institution has the responsibility to increase its recruiting efforts through broadening and intensifying its search. For faculty or instructional appointments, this usually means advertising job openings nationally with special efforts directed through channels likely to reach women. The institution also has the responsibility to indicate the extent to which it is reasonably able to provide training opportunities as a means of making all job classes available to women.

7. *What is the role of "goals" and "timetables" and how do goals differ from "quotas"?*

Goals and timetables, a required part of the institution's written affirmative action program, are designed to correct identifiable deficiencies in the utilization of women. After having determined the degree of underutilization, the institution is asked to analyze its expected expansion, contraction and turnover rate at the various job classification levels and establish a timetable by which it can, through good faith efforts, meet an employment goal of qualified women equivalent to their availability in the work force.

These rates may be established for three-year periods for faculty, but there should be good faith hiring efforts year by year. The timetable for faculty jobs is usually long because of slow turnover rates and the availability of qualified women. If the timetable reaches beyond six years, the university commits itself to an annual review until underutilization is eliminated.

The analyses of small departments and/or instructional areas for which few women have been trained sometimes yield goals that represent a fraction of a person over a timetable of many years. Because of this, HEW does allow for the grouping of related departments, especially those under a single administrative control such as a dean.

HEW makes a definite distinction between goals and quotas as follows:

> Goals are good faith estimates of the expected numerical results which will flow from specific affirmative actions taken by a college or university to eliminate and/or counteract factors in the university's employment process which have contributed to underutilization of minorities and women in specific job categories or resulted in an adverse disproportionate impact in terms of promotion, compensation and training of currently employed minorities and women. They are not rigid and inflexible quotas which must be met. (46, p. 4)

A numerical goal is a statement of intent and a criterion for determining progress, rather than an absolute requirement. Numerical goals have been upheld by the courts, while quotas are illegal. There is no intent to require institutions to hire unqualified persons, but rather to ensure that, among qualified applicants, efforts are made to redress the effects of past discrimination (86, p. 7). Numerical goals are a starting point in determining good faith compliance. If institutions do not meet their goals, it is not considered a violation automatically. They are given an opportunity to show that they have made a good faith effort; if this is so, no penalties are imposed (99). However, an institution is required to determine why it did not meet its goals.

8. *Do the goals and timetables allow the hiring of a woman over a more qualified male?*

No. HEW has stated that institutions are entitled to select the most qualified candidate for any position without regard to race, sex or ethnicity. The institution, not the federal government, is to say what constitutes qualifications for any particular position. No single appointment will be objected to where those not appointed are less well-qualified provided that good faith efforts have been made to recruit qualified women and minority members. HEW further states that

> ...it is improper to suggest or act on the assumption that federal affirmative action provisions require that any particular position be filled by a woman or minority person (46, p. 4).

The Executive Order does not require that a university eliminate or dilute standards which are necessary for successful performance. Further it requires that once valid job requirements are established, they must be applied equally to all candidates. If, however, there are standards or criteria which have had the effect of excluding women, they must be eliminated unless the institution can demonstrate that such criteria are essential for performance in the particular position involved.

An example of such exclusionary criteria involved one institution where differences in pay to matrons (all women) and janitors (all men) were justified on the basis that the job requirements of janitors called for them to lift a greater poundage and climb a higher ladder. It was pointed out that the personnel office, at the time of interviewing applicants for these positions, had neither weights nor ladders at their disposal and that the categorization of job requirement was, therefore, based on an assumption rather than a testing of either men's or women's abilities. The resultant legal action led to correction of this condition and an awarding of back pay to the matrons.

9. *Doesn't HEW's statement, "neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent"* (55, c, 5), *indicate that preferences are being given to women and minority applicants?*

No. If a more qualified white male had applied for the job, he could still be hired ahead of the woman or minority applicant. The statement protects women and minority applicants who *are* the best qualified but are still being told that they do not have the qualifications for the job. If their qualifications are as good as or better than *anyone* currently performing that job, they are assumed to meet the minimum requirements and should be hired.

10. *Do the goals and timetables allow the termination of current employees in order to hire women?*

No. HEW states in the *Higher Education Guidelines:*

> ...nothing in the Executive Order requires or permits a contractor to fire, demote or displace persons...in order to fulfill the affir-

> mative concept of the Executive Order. . . to do so would violate the Executive Order. (9, p. 8)

Affirmative action goals are to be sought through recruitment and hiring for vacancies created by normal growth and attrition in existing positions.

11. *Can an announcement of a job opening indicate a preference for a woman or minority member?*

No. All job announcements and recruiting information must state that the institution is an equal opportunity employer. A statement indicating that applications by women and minority members are welcomed is permissible, but any statement indicating a preference for women, minority members or men is illegal.

12. *How is "recruitment" defined by HEW?*

Recruitment is the process by which an institution or department within an institution develops an applicant pool from which hiring decisions are made. A major purpose of affirmative action is to broaden this pool of applicants so that women and minorities will be considered for employment along with all other applicants.

13. *Does an institution have an obligation to recruit women even if they generally have not had a policy of recruiting?*

Yes. Many institutions have been able to simply choose someone they would like to employ and go after that person, or operate on the basis of personal referrals from so-called "feeder schools" which tend to be prestigious institutions to which women have had limited or no access.

Job openings must be publicized in a manner designed to reach qualified women, and an institution may choose to extend the time of its recruitment period to locate female and minority applicants. This should be done if the utilization analysis shows that the percentage of women and minority applicants is substantially less than their availability in the work force.

14. *Is the employment of students covered by the Executive Order?*

Yes. HEW states that under the Executive Order, students are subject to the same consideration of nondiscrimination and affirmative action as are other employees of the institution. Titles IX and VII also cover student employment and would require affirmative action if there had been a finding of discrimination.

15. *How are affirmative action programs kept current?*

At least once annually the institution must prepare a formal report to the Office of Civil Rights of HEW on the results of its affirmative action compliance program. This evaluation must take into consideration changes in the institution's work force, changes in the availability of minorities and women through improved educational opportunities, and changes in the comparative availability of women as opposed to men as a result of changing interest levels in different types of work.

Interval reporting and monitoring systems vary from institution to institution, but should be sufficiently organized to provide a ready indication of whether progress is being made in the hiring and treatment of women during employment. At some institutions, department heads and other supervisors make periodic reports on affirmative action efforts to a central office.

HEW states that "in most cases all new appointments must be accompanied by documentation of an energetic and systematic search for women and minorities" (9, p. 16).

16. *What is the penalty for failure to comply with the affirmative action requirement?*

The compliance agency issues a notice to the institution giving it 30 days to show cause why enforcement proceedings should not be instituted. During this period efforts shall be made through conciliation, mediation and persuasion to resolve the deficiencies.

If the institution neither shows cause for its failure nor makes satisfactory adjustments, the Director of HEW shall institute formal proceedings to terminate existing contracts and debar the institution from future contracts.

17. *Are most institutions in compliance with the affirmative action requirements?*

According to the ACLU, most institutions are not in compliance because their plan is inadequate or nonexistent. ACLU further states that HEW, due largely to understaffing, had done little to enforce the Executive Order and, therefore, private enforcement efforts are becoming increasingly important (31, sec. 4, p. 5).

A lawsuit was filed in the federal district court for the District of Columbia in November 1974 to force HEW and the Labor Department to enforce the Executive Order and Title IX. This suit pointed to the fact that HEW had turned back thousands of dollars and previous fiscal year as proof that understaffing is not the only factor in the lack of enforcement.* The suit was brought by WEAL, NOW, the Federation of Organizations for Professional Women, the Association of Women in Science, the NEA and four individual plaintiffs (96, p. 1).

The two agencies were charged with failing to keep adequate records of compliance or issue regulations, to follow requirements for pre-award review of institutions, and to require institutions to develop adequate affirmative action plans.

> The plaintiffs contend that despite the submission of over 550 complaints charging sex discrimination under these laws, HEW has never cut off federal funds to any of the institutions so charged. According to the plaintiffs, even in cases where HEW or the Labor Department finds evidence of discrimination against an individual woman, often they take no action to eliminate the discrimination. (HEW has approved only 14 affirmative action plans, although more than 900 colleges and universities have federal contracts.) (96, p. 1)

THE IMPACT

1. *Is affirmative action, as currently designed, "the answer?"*

Probably not. There are problems of coverage, enforcement and focus. In terms of coverage, it has already been noted that Title IX, which has the broadest application to educational institutions, does not require affirmative action unless there is a finding of discrimination. The extent to which the permitted affirmative action under Title IX could be practiced without violating its own non-discrimination clause is debatable.

As has also been noted, even though many institutions do not have acceptable affirmative action programs, no institution has actually had federal funding cut off. This lack of past enforcement by HEW, coupled with their pending proposal that individual complaints no longer be investigated, points to the continued need for individuals and groups to monitor their local situations and exert pressure for change.

Perhaps the most serious limitation to current government policy on affirmative action is its focus on the "available pool" or the number of women "qualified" to hold various jobs. Since women have been historically discouraged or prevented from becoming qualified in all but a few employment areas, this means that the goals of affirmative action are rooted in the figures of discrimination.

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* The Office of Civil Rights actually turned back to the Treasury over 10 percent of its budget (approximately $2.5 million) for the 1975 fiscal year (129).

Critics of affirmative action claim that women and minorities are already employed in numbers equal to or greater than their "qualified" proportion in some areas of the work force. A Carnegie council survey indicates that there is some truth to this claim in that while 16 to 17 percent of all Ph.D.s are held by women, women hold 18 percent of the jobs that can lead to tenured positions. Minorities hold approximately the same percentage of such faculty jobs as their percentage of the total Ph.D.s (4 to 5 percent). This council suggested, therefore, that affirmative action in adding minorities and women to faculties should consider their proportions in the total labor force (14 and 38 percent respectively in 1975) rather than how many are qualified for the jobs. This shifts the emphasis to the supply side. To achieve this without diluting standards, the Carnegie council recommended extending affirmative action to graduate and professional schools admissions in order to increase the number of qualified women and minorities (150).

Such reasoning can also be applied to admissions to vocational and training schools which prepare individuals for jobs not traditionally held by women or minorities.

The intent of affirmative action is commendable, but its implementation leaves much to be desired. If administrators adopt the attitude of taking as long as they can to do as little as they must, achieving equality for women will be a slow, tedious process. If, however, administrators can be made to see that justice rather than compliance ought to be the issue, then real progress can be made.

Such progress will require shifting the emphasis to the supply side, but the Carnegie council's suggestion of applying affirmative action principles to graduate and professional school admissions is only one step, and not the most important one. How many women will be "qualified" to enter graduate and professional schools unless affirmative efforts are executed throughout our educational system? How many girls in elementary schools are still having stereotypical roles thrust upon them? How many secondary school students are being counseled away from courses which will be essential to "qualify" them for professional schools?

The nation's educational system must be overhauled if the intent of affirmative action is to be achieved. Each educator has a responsibility in that overhaul. If each had assumed that responsibility long ago, federal mandates would have been unnecessary.

2. *What should physical educators and those associated with athletic programs do to increase the probability that affirmative action will work?*

a. Ensure that their institution is accountable by asking to see its affirmative action plan.
b. Study the plan to determine the extent to which women are being underutilized. All personnel should be looked at, including teaching faculty, research personnel, coaches, administrators, teaching and research assistants, officials, athletic trainers, medical personnel, sports information personnel, service staff and clerical personnel. (The latter category may show underutilization of males.) Student employment should also be examined, especially the practice of employing male athletes for specific jobs.
c. If underutilization is found, inquire what affirmative efforts are being taken to broaden the pool of applicants and/or to provide training opportunities for women.
d. Examine the criteria for promotion to see if women are being disadvantaged. If promotion is based primarily on research, do women have an equal opportunity to get release time, research assistants and secretarial help?
e. Investigate whether women have opportunities to qualify as "head coaches," athletic directors and department heads, or are they always assigned as "assistants?"
f. Determine whether counselors have information concerning opportunities for girls and women in athletics and related fields.

3. *In what areas should remedial action be sought?*

Any area where discrimination can be documented. This may include teaching or staff salaries, teaching loads, opportunities for summer school employment, opportunities for extra income jobs associated with athletic events, tenure, promotions, office space and equipment, access to facilities such as handball courts and golf courses, committee assignments, provision of teaching or coaching uniforms, and so forth.

Remedial action on behalf of students should be sought if there are inequities in program opportunities, facilities, equipment, uniforms and supplies, financial aid, employment opportunities, modes of transportation, publicity, insurance or access to training facilities or medical personnel.

Certainly this list of affirmative and remedial action concerns is not all-encompassing. Undoubtedly each person can think of further areas of concern in his/her particular situation. Because this is true, it is imperative that each analyze her/his own situation and seek avenues of input to those in decision-making positions concerning inequities that exist.

Emma Goldman, the marvelous feminist of decades past, once wrote:

> Liberty will not descend to a people, a people must raise themselves to liberty; it is a blessing that must be earned before it can be enjoyed.

Chapter IX

Gaining Support from Other Groups

N. Peggy Burke

Introduction

The fact that women have been discriminated against in practically all facets of life has been recognized. Laws aimed at ending such discrimination and at correcting the effects of past discrimination are on the books, but inequities continue. The mere writing of a law does not correct societal conditions; rather this is brought about through enforcement of the law and implementation of corrective measures. The need for such correction can only be recognized at the local level, and substantial change will likely occur only if someone is demanding that it must.

Individual educators should feel the responsibility to make such demands, and many have. Many others, for various reasons, have not found the courage to take such a stand and such action does require courage because it inevitably meets with resistance and resentment from those whose positions are threatened. Sometimes these positions are very powerful in the institutional hierarchy.

Under such circumstances, group action is much more effective and much "safer" than individual action. Local groups, as mentioned earlier, can be very effective, but they frequently lack the experience and expertise of nationally organized women's, civil rights and professional organizations. Many of the national groups have organized state and/or local chapters in order to reduce the geographic distance between themselves and those needing their services.

Educators, and especially physical educators who tend to be conservative by nature, have frequently viewed such groups as somewhat radical and have, therefore, been reluctant to seek their help or join them in their many efforts on behalf of women. Fortunately, in spite of the sparsity of physical educators and coaches in their ranks, these groups have undertaken actions that have benefited teachers, coaches and students.

Increasingly, physical educators are beginning to realize the value of such groups in bringing about equality for women. Those who have worked with such groups are often amazed at how much strength can be drawn from situations where informed people with diverse interests are committed to common goals.

Space does not permit a discussion of the contributions of all the groups and coalitions which are working toward achieving equality for women but a brief discussion of a select number follows.

WOMEN'S ADVOCACY GROUPS

Among the membership groups whose focus is primarily on women's rights and opportunities are the National Organization of Women (NOW), the Women's Equity Action League (WEAL) and the National Women's Political Caucus (NWPC). The first two are concerned with the total range of opportunities for women. The last group, while also dealing with general issues facing women, has as its primary mission the involvement of women in the political processes of the country.

National Organization of Women

This organization, formed in 1966, has as its stated purpose, "taking action to bring women into full participation in the mainstream of American society now, exercising all the privileges and responsibilities thereof in truly equal partnership with men." It is an action organization determined to achieve goals that will allow people to pursue their lives in an equitable and fulfilling manner. These goals are sought through national task forces and through over 800 local chapters in all 50 states and the District of Columbia.

Goals toward which NOW is currently working include:

—ratification of the Equal Rights Amendment
—equal employment opportunities
—revision of state "protective" laws for women
—educational opportunities
—reorientation of the educational system
—developmental child care
—paid maternity leave
—revision of income tax and social security laws
—right to control our own reproduction lives
—a chance for women in poverty
—revisions of marriage, divorce and family laws
—full participation in political activities
—public accommodation
—image of women in the mass media
—ecumenism: women and religion
—corporate responsibility
—masculine mystique

—volunteerism
—social justice

Methods utilized to accomplish these goals include:

- efforts aimed at increasing public awareness as to females' capabilities and the attitudes and conditions which prevent them from realizing their potentialities
- assistance to individuals in filing sex discrimination complaints and/or bringing legal action
- filing class action complaints on behalf of groups of people suffering from discrimination. Such filings generally allow individual complainants to remain anonymous for extended periods of time, sometimes indefinitely
- working for legislation beneficial to women and against legislation that would have an adverse impact on women
- monitoring the actions (or inactions) of federal enforcement agencies and applying pressure to get enforcement of existing equal opportunity laws and regulations and withdrawal of the proposed procedural regulations which would eliminate investigation of individual complaints

Specific accomplishments toward which NOW has worked or is working include:

- revision of EEOC guidelines to include prohibitions against sex discrimination in classified help wanted columns
- repeal of restrictive "protective labor laws" which prevented women from holding many jobs and being eligible for promotion and overtime pay
- elimination of irrelevant employment criteria, such as having preschool age children, unless the same standards apply to men
- development of non-stereotyped attitudes toward child-rearing
- revision of laws and legal procedures which discriminate against women, including property rights, marriage and divorce, abortion, employment and educational opportunities, credit and mortgage practices, and social security and income tax inequities

In regard to education, NOW includes the following among its Statement of Purposes:

> We believe that it is as essential for every girl to be educated to her full potential of human ability as it is for every boy—with the knowledge that such education is the key to effective participation in today's economy and that, for a girl as for a boy, education can only

> be serious where there is expectation that it will be used in society. We believe that American educators are capable of devising means of imparting such expectations to girl students. Moreover, we consider the decline in the proportion of women receiving higher and professional education to be evidence of discrimination. This discrimination may take the form of quotas against the admission of women to colleges and professional schools; lack of encouragement by parents, counsellors and educators; denial of loans or fellowships; or the traditional or arbitrary procedures in graduate and professional training geared in terms of men, which inadvertently discriminate against women. We believe that the same serious attention must be given to high school dropouts who are girls as to boys.

Other educational accomplishments NOW has contributed toward include:

- breakdown of sex-role stereotyping in curricula and textbooks
- employment of increased numbers of women in professional and administrative ranks
- elimination of salary differences and retirement benefits based on sex
- implementation of more equitable admissions policies
- development of increased programs of women's studies in high schools, colleges and universities
- execution of a cap and gown protest march in front of the Department of Labor in support of affirmative action

National task forces of special interest to educators include:

—compliance
—compliance: higher education
—education
—women and health
—legislation
—state legislation
—women and sports

In addition, NOW, through its Legal Defense and Educational Fund, has established a Project on Equal Education Rights (PEER) which monitors the enforcement of all federal laws banning sex discrimination in education. Established under a Ford Foundation grant, this project focuses on Title IX enforcement, particularly in elementary and secondary schools (87).

Efforts specifically affecting physical education and athletics include:

- written comments on the Title IX Regulations including the physical education and athletic sections
- testimony on the Title IX Regulations before the Subcommittee on Post-secondary Education. (The entire proceedings of these hearings have been published and should be available through your congressional representative or senator.)
- meetings with representatives of HEW on the Regulations and Enforcement Procedure Proposal
- Continuous monitoring of proposed amendments to Title IX and the preparation of written testimony and oral testimony when permitted
- suggestions that state education departments be made accountable for Title IX enforcement and for collecting the annual self-evaluation forms of local school districts.

State and local chapters have also supported discrimination complaints of women coaches, charged school boards with sex discrimination in athletics, defended the rights of girls to play on boys teams, formed sports clubs for young girls and boys. and succeeded in getting more money and publicity for girls' sports.

NOW's publications include two newsletters, *Do It Now* and *Peer Perspective*. National dues are $10 per year, renewable every January 1. A special membership of $5 may be elected by those with limited resources. Dues include an annual subscription to *Do It Now* and should be mailed to the National Organization of Women, 5 South Wabash, Suite 1615, Chicago, IL 60603. *PEER Perspective* can be received free of charge by writing to PEER, 1029 Vermont Avenue, N.W., Washington, DC 20005. Inquiries as to the NOW chapter nearest to you should be directed to the Chicago office.

Women's Equity Action League

Founded in 1968, WEAL is a nationwide women's rights organization dedicated to women's equal participation in society with all the rights and responsibilities of full citizenship. WEAL, which has divisions in many states and individual members in all states, works primarily in the areas of education, legislation and litigation. The education committee works to make sure that males and females get an equal education, and the legislative committee lobbies for non-discrimination in all laws including credit, pension reform, working conditions, education, health, taxes and social security.

In 1970, WEAL discovered that Executive Order 11246, which had previously been enforced in situations primarily involving blue-collar construction workers, applied to colleges and universities. On January 31 of that year this small, unknown group filed its first complaint of sex discrimination against the academic community with an "industry-wide charge" of a pattern of sex discrimination. Within the first three years following this filing, more than 360 class-action complaints were filed by WEAL and other women's groups against individual higher education institutions. Their charges were so well documented that none was refuted by subsequent HEW investigators.

WEAL also has filed many charges against elementary and secondary schools. This national campaign to eliminate sex discrimination in educational institutions has resulted in affirmative action programs, salary raises and back pay awards.

WEAL also helped draft the Women's Educational Equity Act, worked to end sex discrimination in want ads, and filed charges of sex discrimination against medical schools. This latter action was a factor in the passage of legislation prohibiting sex bias in admissions or training programs at schools receiving federal funds.

As part of its regular program, WEAL continues to:

- Work for ratification of the Equal Rights Amendment
- Conduct surveys on the status of women in local and state government
- Cosponsor seminars, conferences and training sessions on issues of interest to women
- Provide a speakers bureau
- Conduct surveys and prepare studies in such areas as credit, employment, social security, sports, administration and fellowship opportunities.
- Prepare source materials to aid local groups
- Work for the rights of housewives (home managers).

In carrying out its legislative goals, WEAL:

- Monitors legislation of interest to women and publishes the *Washington Report* which summarizes the progress of all legislation affecting women
- Meets with and lobbies government officials
- Testifies before Congressional and state legislative committees on problems of discrimination in education, employment, credit, estate and family rights
- Monitors and prods government agencies to enforce sex discrimination laws.

In the area of litigation WEAL has, in addition to filing against educational institutions, brought charges against financial institutions for discrimination in credit. National, state and local chapters also advise and assist individuals in filing complaints and/or bringing suit.

In education, WEAL has been concerned not only with employment opportunities and admission policies but also with efforts to eradicate sex-role stereotyping in literature, in testing and counseling materials, and in the manner in which students are treated. Equal access to all educational programs and activities has also been a focus

Much of the efforts aimed at ending sex discrimination in program opportunities has centered around physical education and athletics. Studies comparing athletic programs for males and females have been completed in a number of school systems and institutions, and charges of discrimination have been filed in several states.

At its national convention in 1973, WEAL adopted a resolution urging HEW to take steps to provide equality in physical education and athletic programs. In keeping with that resolution, WEAL has undertaken a number of efforts on behalf of Title IX, including:

- written comments to HEW
- telegrams and letters to the White House
- lobbying efforts against proposed amendments that would have adversely affected physical education and athletics
- testimony before Congressional groups holding hearings on such amendments and on the Regulations proposed by HEW.

WEAL also presented testimony before Congress in support of the bill designed to require Little League to admit girls. Additionally, this organization has recently established a National Clearinghouse on Sex Discrimination in Sports, as a part of its Legal and Education Defense Fund, to collect information about sex discrimination in athletics and physical education programs in elementary and secondary schools, colleges and universities and community funded programs. Information should be sent to WEAL, 821 National Press Building, Washington, DC 20045.

WEAL actions taken at the state and local levels include:

- challenging league and conference rules that discriminate against females
- monitoring institutions' compliance with Title IX, including athletic budgeting, number and kinds of sports for females, and allocation of physical education facilities and equipment

- working to upgrade recreational opportunities for females, minorities and the handicapped
- filing charges of sex discrimination in the provision of physical education and athletic opportunities for students
- filing complaints on behalf of women coaches.

The following publications and kits are among these available from WEAL at the address listed above. Checks should be made payable to WEAL Educational and Legal Defense Fund. The first price listed is for WEAL members, the second for non-members.

Women Graduates in Higher Education ($1-$1.50). A statistical study of the B.S., M.A. and Ph.D. recipients for 1969-1972

Women and Fellowships ($1-$1.50). An examination of the awarding of fellowships and grants.

Higher Education Kit ($2-$2.50). Information on federal laws and regulations and on the filing of complaints. Revised 1975.

K-12 Education Kit ($2-$2.50). Information on sexism, federal laws and discrimination in education.

Sports Kit ($1.50-$2). Information on Title IX and other federal laws and on the filing of complaints. Revised 1975.

Title IX (kits in production).

Regular membership is $15 per year. A $7.50 membership is also available for students, retired persons and others with limited resources. In addition to a regular newsletter and the *Washington Report*, membership provides many opportunities to work actively to end sex discrimination by participating in study or action committees.

National Women's Political Caucus

Founded in July 1971, the NWPC operates as a multi-partisan organization with caucuses in all 50 states and the District of Columbia. Operating independently and in coalition with other groups, this organization devotes a great deal of time to a wide range of issues facing women, including maternity benefits, child care, part-time and flexible employment opportunities, minimum wage amounts and coverage, pension and social security reform, credit laws and educational opportunities. Its primary function, however, is involving women in the political process of the country both as officeholders and informed citizens capable of exerting influence on those who aspire to or do hold office. Efforts directed toward this goal include:

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- encouraging women to actively seek offices from the local to the national level
- urging women to become delegates to their party's national convention
- nominating women for Supreme Court and lower court vacancies

Specific help afforded includes:

- identifying vulnerable seats and finding viable candidates
- providing legal advice and campaign planning information
- providing speakers
- advising on media coverage
- assisting with fund raising
- monitoring the election process

The Caucus also monitors Presidential candidates and publicizes their views on issues affecting women. State and local caucuses function in the same manner with regard to candidates seeking local and state offices.

Having as its number one priority the ratification of the Equal Rights Amendment, the Caucus is exerting special efforts in those states that have not yet ratified. Realizing that one way to change laws is to change lawmakers, the Caucus, in concert with other groups, is working to unseat the die-hard opponents of the ERA. The Caucus also prepares testimony on legislative matters and frequently is asked to make recommendations to White House councils.

Membership dues, which are $15 annually and include the newsletter and special bulletins, should be mailed to NWPC, 1921 Pennsylvania Avenue, N.W., Washington, DC 20006.

Commissions on the Status of Women

Unlike the groups mentioned above, these commissions are generally appointed rather than operate as open membership groups, although some local commissions may practice an open membership policy.

The commissions had their genesis in the President's Commission on the Status of Women appointed by President Kennedy in 1961. The first state commission was appointed in 1962, and by 1967, all states plus the Virgin Islands, Puerto Rico and the District of Columbia had established such groups. Many local commissions have also been established.

Initially, most of the state commissions were created by executive order and were therefore referred to as Governer's Commissions. Increasingly they have moved to legislative establishment and budgeting which affords them the advantage of greater continuity and added resources, but frequently leads to less freedom in defining their own program and procedures (5). State commissions are appointed by the governor or legislature while commissioners of local groups are usually appointed by mayors or county boards.

In the early days of the commissions, the work was carried out by the appointed members. This was found to be an inadequate approach and growing numbers of these commissions are receiving funding to employ professional staff members.

Through various standing and ad hoc committees, the commissions undertake both long- and short-range projects designed to assess and improve the status of women. Areas of interest include, but are not limited to, employment, education, credit, sexism, prison reform, retirement plans, child care, guidance and counseling and family and probate laws. Efforts are made to assess and meet the needs of females of all ages, educational backgrounds, races, nationalities and economic status and employment pursuits.

In addition, most commissions maintain a roster of qualified women whom they can recommend when vacancies occur in appointive positions. Qualified women are also encouraged to run for public office.

As was true of the other organizations, the commissions are working for ratification of the ERA and generally monitoring legislation affecting women. In addition to their planned programs and priorities, commissions attempt to deal with the problems faced by individual women. Local commissions can be especially helpful in this role.

Since commissions do carry the weight of the appointing agency, they have a unique opportunity to influence public opinion and decision makers (5).

An Interstate Association of Commissions on the Status of Women was founded in 1970, and an annual conference was first held in 1971. Actions of this group are in no way binding on state commissions. For information about the nearest commission(s), write to this group, now known as the National Association of Commissions for Women, at 926 J. Street, Room 1003, Sacramento, CA 95814.

American Civil Liberties Union

The ACLU, founded in 1920, has 275,000 members of whom 100,000, or 37 percent, are women. It is organized into 50 state affiliates and some 350 local chapters, with offices in most medium and large cities. Approximately 5,000 attorneys volunteer their services to ACLU.

The stated purpose of ACLU is "to protect the rights of freedom of inquiry and expression, privacy, due process of law and equality before the law guaranteed to all Americans by the constitution."

This group appears before the Supreme Court more frequently than any other group except for the Department of Justice, and has litigated thousands of cases in the lower courts. Additional efforts at protecting civil liberties are directed through legislative actions at the national, state and local levels and at administrative proceedings of federal, state and local agencies.

The ACLU provides legal representation for the many groups which are seeking rights historically denied them, including females. In the spring of 1972, the ACLU established as a priority program a Women's Rights Project to eradicate, through litigation and public education, those laws and policies which discriminate on the basis of sex. It focuses primarily on issues related to employment, government benefits, education, insurance, maternity rights and athletics.

Since its founding, the Project has been involved in most of the major Supreme Court cases on women's rights and maintains a legal docket of several hundred sex discrimination cases which the ACLU is litigating. Virtually every ACLU affiliate has established a Woman's Rights Committee or liaison person who works with the national Project staff and cooperating attorneys in their own states to develop programs to fight sex discrimination. Anyone interested in working on the Women's Rights Committee will be provided contact names by the national offices (see addresses below).

The ACLU won a case in the Idaho Supreme Court that held that women are entitled to equal protection of the laws. Two cases that reached the Supreme Court involved a challenge to discrimination against women in jury service and a challenge to sex discrimination in social security benefits. The latter case was won through a decision allowing widowers as well as widows to be entitled to benefits (23).

In the area of education, the national office and/or affiliates have:

- Pressed universities to withdraw from participation in Rhodes scholarship programs in hopes of pressuring the British parliament to change the terms of the will to include women.*
- worked to influence legislation to increase the rights of teachers in regard to dismissal practices and other employment procedures
- indicated an interest in pursuing student rights
- issued comments on the Title IX Regulations

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* *Editor's Note*: In 1975 the British government pressed legislation for the equality of women, and in December 1976, 13 American women were the first recipients of their sex to be awarded Rhodes scholarships.

In addition, the Project has prepared a packet which can be used by nonlawyers in fighting sex discrimination in athletics and physical education. Affiliates have been active in litigating sex discrimination suits in athletics and physical education. Some suits have involved students' rights while others have involved the rights of teachers and/or coaches.

Publications by the ACLU include:

The Rights of Women, Susan C. Ross. A handbook on the legal rights of women and remedies women can use to enforce those rights. $1.25.

Legal Docket. A cumulative, descriptive listing of ACLU affiliate and national office litigation in the area of sex discrimination. Updated on a quarterly basis.

Employment Discrimination, Kathleen Peratis. A handbook for Title VII and other employment litigation, from the filing of a charge to the framing of remedies. $2.

"Equal Pay Act Guide." A lay person's guide on how to file and process a charge under the Equal Pay Act.

"Private Right of Action for Retaliation Under the Equal Pay Act." A legal memorandum.

Social Security: Briefs on various issues of racial, sex discrimination in Social Security laws, including brief before the Supreme Court in *Weinberger* v. *Wiesenfeld*.

Sex Discrimination in Athletics and Physical Education. A comprehensive packet of materials containing legal and organizing advice on fighting illegal sex discrimination. $1.50.

Contributions will be accepted where no charge is indicated.

Basic membership in ACLU is $15 with a $5 limited income option. This includes a subscription to the national newsletter, *Civil Liberties*, and to local affiliate newsletters. ACLU membership automatically makes one a part of both the national organization and the state affiliate and local chapters, where they exist. Dues should be sent to ACLU, 22 East 40th Street, New York, NY 10016. The Women's Rights Project is at the same address.

GROUPS REPRESENTING EDUCATORS

Space does not permit a discussion of all the groups representing educators. The following member organizations are offered as examples.

American Association of University Professors

For more than 60 years this organization has concerned itself with matters related to academic freedom and to issues pertaining to faculty rights and status. AAUP has more than 70,000 members and chapters on many two- and four-year college and university campuses.

The work of AAUP is accomplished both nationally and locally through major committees. One of the most recently established of these is Committee W on the Status of Women in the Academic Profession whose activities have included the following areas:

leaves of absence for child-bearing, rearing and family emergencies
tenure and affirmative action
equal pay
salary surveys and the development of a kit to assist faculties and administrators in undertaking salary studies
sex-based differentials in fringe benefits
graduate education

Representatives from Committee W compiled and gave testimony on the Title IX Regulations, and presented an especially strong case against the continued discrimination against women in retirement benefits. This excellent testimony is contained in the proceedings of these hearings (21). A number of comments were also made about the weaknesses of the athletic sections. The national Committee W encourages the establishment of Committee W's at the conference and chapter level and they provide personnel to chapter and conference meetings upon request.

In 1974, at the 60th annual meeting, the members called upon the Secretary of HEW and other government officials to enforce vigorously the laws and policies of non-discrimination and affirmative action and to adhere to the spirit as well as the letter of the requirement. They also adopted a resolution urging the issuance of Title IX regulations that would assure equal access to all programs in higher education, including athletics, without regard to sex (71).

In 1975, Committee Z on the Economic Status of the Profession received a grant to gather and publish data on sex differentials in compensation. Areas of future endeavor include:

- collective bargaining issues of special concern to women
- formulation of an employment roster of qualified women
- issues involved in part-time appointments

Membership dues vary according to salary with a range of $12–$36. Graduate student memberships are $5. The *AAUP Bulletin* and national and state newsletters are included in the membership.

American Federation of Teachers

The AFT, a member union in the AFL-CIO, has approximately half a million members, nearly 65 percent of whom are women who teach in public schools and in colleges and universities. It has established a Women's Rights Division which functions to protect the employment rights of women, inform people of these rights and assist locals in setting up similar Women's Rights Committees.

Some of the provisions that contracts seek to incorporate are:

- equal pay for equal work
- equitable practices in hiring, promotions, extracurricular assignments and athletics
- elimination of sexist stereotyping while emphasizing the capacities of each student as an individual
- equitable health and medical insurance benefits
- treatment of pregnancy as any other temporary disability
- child-rearing leaves for either parent

Some of the resolutions adopted at AFT annual conventions include:

- ratification of the ERA
- increased leadership roles for women in the union
- support of parental rights
- eradication of sexism in teaching materials
- development of curricular materials for children on the equality of women
- support for continuing education and counseling programs for women
- elimination of single sex vocational schools
- support for affirmative action programs

The AFT prepared written comments in support of Title IX and of stronger provisions in several areas of the Regulations including the athletic section. It has also suggested that locals examine their contract provisions to see wheher they require that athletic coaches, male and female, receive comparable salaries based on their responsibilities and experience.

Publications include several pamphlets and monographs on women's rights and one major publication, *Women in Education: Changing Sexist Practices in the Classroom*, revised, 1975.

National Education Association

This organization, originated in 1857, is reported by *Encyclopedia*

Britannica to be the largest professional organization in the world, having passed the one million member mark in 1967. This organization has gone on public record as being opposed to all forms of discrimination. Its goal for 1971–72 was listed as human and civil rights for all educators and children.

Actions taken specific to sex discrimination include resolutions, publications, multimedia presentations, litigation and statements and testimony in support of Title IX and strong enforcement regulations.

In 1971, this group adopted a resolution calling for non-discrimination in employment practices at all levels, including administrative and non-discrimination in access to elective, appointive and staff positions. NEA has also suggested that state and local affiliates should be systematically evaluated for non-discrimination.

The DuShane Emergency Fund has been established to defend teachers' rights by ensuring constitutional protection, academic freedom and freedom from discrimination. For example, the Fund has been used to plan legal strategies, file "friend of the court" briefs and to pay attorney's fees and/or afford extending interest-free loans if the educator's case has legal merit and meets other established criteria.

Suits have been filed on behalf of women educators for "equal protection of the laws" in situations involving maternity leave, tenure and seniority rights, retirement, promotion and salary benefits.

This group has urged HEW to develop a nationwide data bank on the number of women and minority persons available for college teaching positions. NEA is also one of the groups that has filed charges against HEW for failure to enforce civil rights legislation. The NEA journal, *Education Today*, regularly carries articles on Title IX, affirmative action and sex bias in textbooks.

Publications available from NEA include:

Combating Discrimination in the Schools, Legal Remedies and Guidelines. Order #385-11604.

ERA, The Equal Rights Amendment and You. $6, 0680-1-OE. (Tape)

Nonsexist Education for Survival. $2.25, #385-11612.

Sex Role Stereotyping in the Schools. Paper $2.50, #0578-3-OF.

Today's Changing Roles: An Approach to Nonsexist Teaching. $3, #1346-8-OE.

What is Affirmative Action? Combating Discrimination in Employment. #385-11602.

Multimedia programs are also available on sex role stereotyping.

The publications are available from NEA Order Department, The Academic Building, Saw Mill Road, West Haven, CT 06516.

Membership dues, which include, *Today's Education*, are Active $30, Associate $15, Para-professional $15, Student $3.50, and Retired $5.

American Alliance for Health, Physical Education, and Recreation

Founded in 1887, this organization of 40,000 members offers strong support to those pursuing equal opportunity in education. In 1972, President Barbara Forker established a Committee to Study Discrimination Against Women and Girls, with the specific objectives of investigating:

- discrimination in salary, promotions and tenure
- administrative opportunities for the female
- coaching qualifications and opportunities

In the spring of 1973, the Task Force on Equal Opportunities for Women and Girls was appointed as a subcommittee to study the prevalence of sex discrimination patterns in educational materials and counseling and guidance materials at all levels. An extension of time was granted to these groups by AAHPER's 1973 president, Willis Baughman.

In 1974, President Katherine Ley broadened the focus of equal opportunity concerns by appointing a Task Force on Equal Opportunity and Human Rights. This group has continued through President LeRoy Walker's term of office, with Marjorie Blaufarb acting as staff liaison.

This group has developed a human rights and affirmative action document with statements on employment opportunities and hiring procedures; salaries, working conditions, fringe benefits, promotions and tenure; program offerings for all grade levels and the handicapped; and guidance and counseling and provisions for the support of intramural and athletic programs for all students. It has also called on the Research Council for help in identifying and performing research related to problems of discrimination and other areas of particular concern to women and minorities.

Information related to equal opportunity is frequently published in AAHPER's *Journal of Physical Education and Recreation*. *Update*, AAHPER's newsletter, has a regular feature entitled "Update on Legislation Washington Report" and frequently carries other articles related to opportunities for women. Marjorie Blaufarb, director of public affairs, AAHPER, has written a pamphlet, *Complying with Title IX of the Education Amendments of 1972 in Physical Education and High School Sports Programs*.

The leadership of AAHPER has given support to Title IX through written comments and testimony and has strongly supported women's rights in the governance of athletics.

As sub-units of AAHPER, The National Association for Girls and Women in Sport (NAGWS) and the Association for Intercollegiate Athletics for Women (AIAW) have become effective forces for equal opportunities for girls and women in their specific areas, in education generally, and in society at large. Their efforts include improving the abilities of women through conferences, workshops and clinics; informing the members through newsletters and other mailings; preparing written comments and presenting Congressional testimony on legislation affecting women; joining with other groups in lobbying efforts on behalf of women; and generally pressing for programs that allow for the development of girls and women's abilities.

NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

The organizations that comprise the National Coalition for Women and Girls in Education (listed in Appendix H) have chosen Washington area representatives to meet and work together in monitoring legislation and other issues of concern to women. Many also serve as information gathering agencies whose publications are invaluable to the quest for equal opportunity. While all have publications which are circulated to their membership, The Project on the Status of Women of the Association of American Colleges should be especially recognized for its widespread distribution of excellent materials.

Most of these groups also presented testimony and/or prepared extensive written statements in support of Title IX and strong regulations. Discrimination in physical education and athletics was frequently emphasized in these statements.

The National Commission on International Women's Year

The National Commission on International Women's Year has been funded by Congress to set up state and/or regional conferences for women with a culminating National Women's Conference to be held. This national conference is slated for November 1977, and conferences in each state precede it.

Originally formed in 1975, the National Commission spent almost 12 months investigating the "barriers to the full participation of women in the Nation's life." The recommendations cover all facets of life and were submitted to President Ford. Specific recommendations relative to the areas of physical education and sport are reproduced below (pp. 162-166, 168-172). The complete 382-page report, titled "... *To Form a More Perfect Union ..." Justice for American Women*, is available from the Office of Public Information, IWY Commission, Room 1004, Department of State Building, Washington, DC 20520.

STUDY ON ATHLETICS AND PHYSICAL EDUCATION BY U.S. COMMISSION ON CIVIL RIGHTS[67]

The IWY Commission recommends that the U.S. Commission on Civil Rights conduct its planned study of "Sex Discrimination in Physical Education and Athletics" without delay, using this study to evaluate the effectiveness of title IX (Education Amendments of 1972) in eliminating sex discrimination in physical education and athletics generally in educational institutions.

Background

Sex discrimination in athletics and physical education programs has certainly been the most publicized and controversial issue surrounding implementation of title IX of the Education Amendments of 1972; which prohibits sex discrimination in federally assisted education programs.

The commissioners of the U.S. Commission on Civil Rights have approved a study of "Sex Discrimination in Physical Education and Athletics" for inclusion in the budget for FY 1977. This $183,000 study is planned to begin in November 1976 and to be completed by February 1978. It would investigate such areas as:

- The funding and staffing of programs, and the provision of the number and type of programs provided for girls and women;
- The impact of discriminatory treatment on the development of female children;
- The manner in which the athletic system itself contributes heavily to the socialization of girls and boys and the imposition of limiting sex role stereotypes, as well as the impact of limiting physical abilities on the employment future of women; and
- The Federal role in assuring nondiscrimination in physical education and athletics under title IX of the Education Amendments of 1972.

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[67] Recommendation approved by Enforcement of the Laws Committee Jan. 8, 1976; by IWY Commission Jan. 16, 1976.

HEARINGS ON THE PRESIDENT'S COMMISSION ON OLYMPIC SPORTS[68]

The IWY Commission on the Observance of International Women's Year recommends that the President's Commission on Olympic Sports in its hearings include the topic of women's participation and leadership.

Background

The mandate of the President's Commission on Olympic Sports clearly includes a study of the role of participants in the governance of their own sport. Data indicate that women are discriminated against as participants and leaders in sport competition representing the United States.

PARTICIPANTS IN WORLD UNIVERSITY GAMES—MOSCOW 1973

					No. of events	
Sport	*Men*	*No. of countries*	*Women*	*No. of countries*	*Men*	*Women*
Basketball	325	29	186	16		
Wrestling	197					
Water Polo	131					
Volleyball	262	23	174	15		
Gymnastics	89	28	43	12	6	4
Track and Field	446	55	182	31	21	13
Swimming	156	29	80	16	13	9
Diving	24	14	17	10		
Tennis	51	25	36	21		
Fencing	211	29	52	15	6	2

WOMEN IN LEADERSHIP POSITIONS—MOSCOW 1973

	Percent	
	Men	*Women*
Coaches women's basketball	85	15
Coaches women's volleyball	70	30
Chef de mission, 72 countries	100	

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[68] Recommendation approved by Enforcement of the Laws Committee Jan. 8, 1976; by IWY Commission Jan. 16, 1976.

EXPANDING THE ROLE OF WOMEN IN THE GOVERNANCE OF SPORT[69]

The IWY Commission will contact national sport governing bodies, federations, associations, and committees to request that they (1) compile data on the frequency and levels of female leadership in their organizations; (2) develop affirmative action programs to bring women representatives into all levels of their sports governance structures; and (3) send copies of the data and affirmative action programs to the IWY Secretariat.

Background

As with most power structures, women are largely underrepresented in the policymaking bodies of sports organizations. For instance:

At a 1973 meeting of the General Assembly of International Federations (GAIF), there was one woman representative among the official delegates.

At a 1975 executive committee meeting of the U.S. Olympic Committee there were 2 women as official representatives among about 35 officials.

At the 1975 General Assembly of the International Federation for University Sport there was 1 woman delegate among representatives from 44 countries.

A group of sportswomen, acting as consultants for the U.S. Center for International Women's Year, agreed this kind of exclusion is characteristic of the sport organization system.

The above recommendation, calling for affirmative action, would be sent to the following groups:

National Archery Association of the United States
Amateur Athletic Association of the United States
Amateur Athletic Union of the United States
National Collegiate Athletic Association
National Federation of State High School Athletic Associations
National Association of Intercollegiate Athletics
National Junior College Athletic Association
American Badminton Association
American Association of College Basketball Coaches
Little League Baseball
U.S. Baseball Federation

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[69] Recommendation approved by Enforcement of the Laws Committee Jan. 9, 1976; by IWY Commission by mail ballot Feb. 1976.

National Association of Basketball Coaches of the United States
Basketball Federation of the United States of America
International Association of Approved Basketball Officials
Amateur Bicycle League of America
American Canoe Association
Amateur Fencers League of America
U.S. Figure Skating Association
U.S. Gymnastics Federation
U.S. Team Handball Association
American Alliance for Health, Physical Education and Recreation
Amateur Hockey Association of the United States
Field Hockey Association of America
U.S. Judo Federation
American Motorcycle Association
National Association of Amateur Oarsmen
U.S. Olympic Committee
U.S. Parachute Association
National Association of the Partners of the Alliance
U.S. Modern Pentathlon and Biathlon Association
National Rifle Association of America
U.S. International Skating Association
U.S. Ski Association
U.S. Soccer Football Federation
Amateur Softball Association of America
Sports Ambassadors
Interservice Sports Committee
People-to-People Sports Committee
U.S. Collegiate Sports Council
U.S. Lawn Tennis Association
U.S. Table Tennis Association
U.S. Track and Field Federation
U.S. Track Coaches Association
U.S. Volleyball Association
U.S. Wrestling Federation
Amateur Basketball Association of the United States of America
American Horse Shows Association, Inc.
American Swimming Coaches Association
U.S. Yacht Racing Union
American Bowling Congress

PROCLAMATIONS TO ENCOURAGE WOMEN IN SPORTS[70]

The IWY Commission recommends that:

1. A proclamation be issued for all Federal, State, and local recreation-oriented agencies and the President's Council on Physical Fitness and Sport, calling for program emphasis on lifetime sport opportunities for women.

2. The President issue a proclamation declaring an "Equality for Women in Sport" day during the Bicentennial Year. The sports day would honor past U.S. sports heroines and encourage schools, colleges, and other public agencies to advance present and future opportunities for women in sport, especially through compliance with title IX of the Education Amendments of 1972.

Background

Sports participation is an important aspect of the quality of life for citizens. However, participation in sports has always been emphasized more for men than for women, both in the popular press and through more institutionalized support of sports for men and boys.

Prominent men's collegiate athletic associations such as the National Collegiate Athletic Association and the National Football Coaches Associations have never supported title IX prohibiting sex discrimination in education and have maintained that implementation at the collegiate level would destroy college football.

Data from research in 1969 and 1973 show the following disparities in expenditures for men's and for women's collegiate athletic programs.

MEN'S ATHLETIC BUDGETS—1969*

Class A (major football institutions)	Average revenues	$1,397,000
	Average expenses	1,322,000
	Profit	75,000
Class B (college division institutions)	Average revenues	185,000
	Average expenses	247,000
	Loss	−65,000
Class C	Average revenues	37,000
	Average expenses	196,000
	Loss	−65,000
Class D (major basketball with no football)	Average revenues	69,000
	Average expenses	196,000
	Loss	−127,000

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[70] Recommendation approved by Enforcement of the Laws Committee Jan. 9, 1976; by IWY Commission Jan. 16, 1976.

MEN'S ATHLETIC BUDGETS—1969* cont...

Class E (no football)	Average revenues	22,000
	Average expenses	54,000
	Loss	−32,000

*Michael Raiborn, *Financial Analysis of Intercollegiate Athletics*. National Collegiate Athletic Association. 1970.

WOMEN'S ATHLETIC BUDGETS—1973*

Institutions over 20,000 students	$12,938
10,000 to 15,000 students	9,420
5,000 to 9,999 students	9,493
3,000 to 4,999 students	9,412
Under 3,000 students	3,991

*Marilyn Vincent, *Journal of Health, Physical Education, Recreation*, Mar. 1973.

REVISING THE PUBLICATION OF THE PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS,

SUGGESTIONS FOR SCHOOL PROGRAMS; YOUTH PHYSICAL FITNESS, SEPTEMBER 1973[71]

The IWY Commission requests the President's Council on Physical Fitness and Sports to revise its 1973 publication in the following manner:

1. Eliminate unnecessary differences in standards between boys and girls appearing on pages 12, 13, 14, 31 (girls' push-ups), and 48.

2. Eliminate sexist prejudices inherent in text; pages 53 and 54, which link weight training for women to motherhood only; page 62, where only men athletes are listed for gains through interval training; page 83, where only the "football coach" is listed as a public relations asset; page 88, where girls' role in public demonstration emphasizes dance, gymnastics, and other "form events."

Background

The committee, in making the above recommendations, takes into account three relevant facts:

- Research indicates that boys' and girls' physical performance is comparable prior to puberty.

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[71] Recommendation approved by Enforcement of Laws Committee Jan. 9, 1976 by IWY Commission Jan. 16, 1976.

- The effects of socialization appear to detrimentally affect female physical abilities at all ages.
- Publications of the Federal Government should lead the way in encouraging excellence in all areas of performance from its citizens.

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972[72]

The IWY Commission recommends that:

1. The Secretary of the Department of Health, Education, and Welfare (HEW) direct the Director of the Office for Civil Rights to effectively enforce title IX, including the withholding or terminating of Federal funds.

2. The Secretary of HEW instruct HEW's Office for Civil Rights to establish immediately a full compilation of all title IX rulings to date and to continue to maintain this compilation in the future, indicating that this compilation will be available to both HEW staff and the interested public.

3. The President and the executive branch oppose any amendments which would weaken the protections against sex discrimination in education guaranteed by title IX.

Background

At this time neither HEW civil rights staff nor the public has access to a compilation of rulings on, or interpretations of, title IX (which prohibits sex discrimination in federally assisted education programs). A major obstacle to meaningful compliance with title IX has been the lack of consistent, sound interpretations of the law and relevant regulations. Additionally, there has been a great deal of variation from region to region concerning the "proper" interpretation of title IX.

Because HEW staff do not have access to this information, they are unable to answer some important substantive questions on title IX, leaving schools, colleges, and the victims of sex discrimination without guidance on how to interpret the law or protect their rights.

Several legislative amendments have been introduced in Congress to weaken title IX. HEW did not oppose the "Tower Amendment" (concerning intercollegiate athletics) and the President indicated in July 21, 1975 letters to the chairs of the House and Senate Committees which jurisdiction over title IX that he would "welcome Congressional hearings on [the O'Hara bill, which would exempt certain intercollegiate athletic activities from title IX]."

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[72] Recommendation approved by Enforcement of the Laws Committee Jan. 9, 1976; by IWY Commission Jan. 16, 1976.

Until July 1975, when HEW's final regulation for title IX took effect, enforcement was minimal, as many complainants were told their cases would not be investigated until the regulation was final (including some whose cases were in an unambiguous, noncontroversial area and which could not possibly be affected by the final stages of the regulation process).

Since the regulation took effect, although hard information on the status of title IX cases is unavailable from HEW, there have been many indications that HEW does not intend to move forcefully against sex discrimination illegal under title IX:

- According to HEW's enforcement plan for elementary and secondary school systems this year, title IX ranks eighth in priority among 12 kinds of enforcement action.
- The civil rights office has scheduled only six comprehensive, system wide reviews under title IX this year—6 out of 16,000 school districts.
- According to the 1976 plan, HEW intends to investigate only a fraction of the title IX complaints it expects to receive this year. For example, while the Atlanta office expects to receive 120 complaints this year, it plans to investigate only 33. The New York office has set aside time to look into only 3 of this year's projected 52 complaints.
- One HEW regional civil rights unit, the Dallas office, has notified title IX complainants that it cannot handle their complaints at this time claiming that a court order requires the office to put all its resources into resolving race discrimination cases. Several organizations have asked for an injunction to force HEW to resume acting on title IX complaints.
- Although HEW argues it cannot adequately enforce the law because of "lack of resources," the civil rights office turned back over 10 percent of its budget to the Treasury unspent last year. The Administration requested no new positions for enforcement in elementary and secondary education for the current fiscal year.
- HEW is currently being sued for nonenforcement of title IX as well as several other laws barring sex discrimination in education.
- HEW is currently exploring the possibility of turning over some of its enforcement responsibilities, including the investigation of complaints, to the States.
- In June 1975 HEW proposed new civil rights procedural rules which would relieve the Department of its current obligation to act on complaints filed under title IX and other civil rights laws.

Despite strong pressure to rescind this proposal, HEW Secretary Mathews has refused to indicate that a revision will include the obligation to investigate all complaints.

HEW OFFICE FOR CIVIL RIGHTS RESOURCES AND ENFORCEMENT[73]

The IWY Commission recommends that:

1. The Office for Civil Rights, Department of Health, Education, and Welfare (HEW) immediately formally withdraw the "Consolidated Procedural Rules for Administration and Enforcement of Certain Civil Rights Laws and Authorities";

2. The Office of Management and Budget (OMB) immediately review the enforcement resources and priorities of the HEW Office of Civil Rights, and support increased appropriations if necessary to establish and maintain an effective enforcement effort under title IX of the Higher Education Amendments of 1972;

3. The Office of Civil Rights, HEW, develop and implement a complaint-processing system that would include action on current complaints at the same time the backlogged complaints are processed, in order to handle effectively all matters of discrimination without pitting one group against another.

Background[74]

The controversy over the HEW Office of Civil Rights enforcement of Executive Order 11246, as amended, (i.e., the contract compliance program) surrounds the substantive program as well as the programmatic procedures. As Congressman O'Hara stated in the hearings on the civil rights obligations of institutions of postsecondary education, "They may disagree on what HEW should have been doing, but they all agree that it hasn't been doing it."[75] The backlog in complaints is due to inadequate staffing and the *Adams* v. *Weinberger* decision in Dallas (see below, under Priorities).

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[73] Recommendation approved by Enforcement of the Laws Committee Dec. 4, 1975; by IWY Commission Dec. 5, 1975.

[74] Some of the material in this background section was excerpted from a study prepared by Norma Raffel, "The Enforcement of Federal Laws and Regulations Prohibiting Sex Discrimination in Education," under contract with the IWY Commission.

[75] Hearings before the Special Subcommittee on Education and Labor, U.S. House of Representatives, Sept. 1974, p. 322.

In October 1972, HEW/OCR issued "Higher Education Guidelines" which related the requirements of Executive Order 11246, as amended (contract compliance program), and the Office of Federal Contract Compliance's Revised Order No. 4 to colleges and universities having Federal contracts. However, according to the former Director of the Higher Education Division, HEW/OCR, the guidelines were not specific enough for institutions to know what was expected of them, and they did not provide specific guidance to HEW/OCR's regional staff for evaluating institutions' affirmative action plans (AAPs). "A Format for Development of an Affirmative Action Plan by Institutions of Higher Education" was issued on August 1975 to facilitate compliance with Executive Order 11246 and to clarify the obligations of colleges and universities to maintain acceptable AAPs.

Complaint Processing. The Higher Education Division of HEW's Office for Civil Rights enforces Executive Order 11246 for between 863 and 1,300 institutions; estimates vary. As of December 31, 1973, the HEW/OCR Higher Education Division inventory showed a total of 296 Executive order complaints (individual and class) that were considered active. The status of these complaints is described on the chart below:

Investigations

	Total no.	*Acknowledged*	*Completed*	*Letters of findings**	*Other***
Individual complaints	116	4	30	23	59
Class complaints	180	128	10	23	19

*The letter of finding is sent to an institution after an investigation, and details what is needed to bring the institution into compliance.

**Other: Referred for enforcement, investigation scheduled, negotiation, or no designation.

Of the individual complaints 35 percent had been only acknowledged, 45 percent had been investigated, but a letter of finding has been issued in only 20 percent of the complaints filed. Of the class complaints, 71 percent had only been acknowledged, 18 percent had been investigated, and letters of finding were issued in 13 percent of the complaints filed. In calendar year 1974 HEW/OCR received 197 Executive order complaints and resolved 33.

AMENDING PROPOSED REGULATIONS IMPLEMENTING TITLE IX OF THE EDUCATION AMENDMENTS OF 1972[82]

The IWY Commission recommends that the President consider the

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[82] Recommendation adopted by IWY Commission May 16, 1975.

following recommendations for changes in the regulations to implement title IX of the Education Amendments of 1972:

1. Allowing complainants the option of using internal grievance procedures, if an institution has them, *or* filing complaints directly with the Department of Health, Education, and Welfare (HEW). The complainant would, of course, have the option of both filing with HEW and using the internal grievance procedure.

2. Developing a new provision which would require the recipient of Federal assistance to conduct and publish self-evaluation to assess its status in regard to existent sex discrimination. This evaluation should cover admission practices, financial [illegible] educational program access, curriculum, and athletics, as well as employment.

3. Establishing a uniform pension policy under the existing Federal legislation now covering employment. The Equal Employment Opportunity Commission (EEOC) guidelines, which require equal periodic benefits, would appear to be more equitable, and the title IX regulations should reflect this approach.

4. Deleting the references to contact sports and replacement of the athletic sections with the language of the June proposed draft.

ENFORCEMENT OF TITLES VII AND VIII OF THE PUBLIC HEALTH SERVICE ACT OF 1971[83]

The IWY Commission recommends that the Secretary of the Department of Health, Education, and Welfare (HEW) take immediate steps to publicize widely the provisions of the Public Health Service Act prohibiting sex discrimination in admission to Federally funded health training programs and to develop an effective enforcement program, including prompt handling of complaints and compliance reviews.

MODEL COMPLIANCE REVIEWS IN EDUCATIONAL INSTITUTIONS[84]

The IWY Commission recommends that the Department of Health, Education, and Welfare (HEW), Office of Civil Rights, should conduct model contract compliance reviews of various types[85] of educational institutions: school districts on both the elementary and secondary level, doctoral-granting institutions, comprehensive colleges and universities, 2-year colleges and universities, professional schools and other specialized institutions, and liberal arts colleges. Any deficiencies uncovered during the review should receive appropriate enforcement and the results should be widely publicized.

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[83] Recommendation approved by Enforcement of the Laws Committee Jan. 9, 1976; by IWY Commission Jan. 16, 1976.

[84] Recommendation approved by Enforcement of the Laws Committee Sept. 16, 1975; by IWY Commission by letter, announced Dec. 5, 1975.

[85] All except elementary and secondary level school districts are classifications for higher education used by the Carnegie Commission on Higher Education.

U.S. OFFICE OF EDUCATION TASK FORCE REPORT, *A LOOK AT WOMEN IN EDUCATION*[86]

The IWY Commission recommends that:

1. The Secretary of the Department of Health, Education, and Welfare (HEW) immediately authorize a followup report to analyze the progress that has been made to date on the recommendations included in *A Look at Women in Education* and to identify HEW plans for implementing those recommendations which have not yet been fully implemented.

2. The Assistant Secretary for Education at HEW take immediate steps to implement those recommendations which have not yet been implemented.

CIVIL RIGHTS SURVEY OF ELEMENTARY AND SECONDARY SCHOOLS[87]

The IWY Commission recommends that:

1. The Department of Health, Education, and Welfare (HEW) continue its Elementary and Secondary School Civil Rights Survey to be completed annually by all schools.

2. The survey form be revised to contain additional questions concerning sex discrimination, in order to determine institutional compliance with title IX (Education Amendments of 1972), and to collect all data by both sex and race or ethnicity in order to determine patterns of discrimination against minority females.

3. The HEW Office for Civil Rights collect all survey forms for analysis and make this information available to interested parties.

TITLE IV FUNDS OF THE 1964 CIVIL RIGHTS ACT TO END SEX SEGREGATION[88]

The IWY Commission recommends that the Secretary of the Department of Health, Education, and Welfare (HEW) instruct the Com-

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[86] Recommendation approved by Enforcement of the Laws Committee Jan. 9, 1976; by IWY Commission Jan. 16, 1976.

[87] Recommendation approved by Enforcement of the Laws Committee Jan. 9, 1976; by IWY Commission by mail ballot Feb. 1976.

[88] Recommendation approved by Enforcement of the Laws Committee Jan. 8, 1976; by IWY Commission Jan. 16, 1976.

missioner of Education to use funds available under title IV of the 1964 Civil Rights Act to end sex segregation by:

1. Revising the point system for awarding funds under this act, so that projects or training aimed at eliminating sex segregation are not at a disadvantage;
2. Seeking adequate appropriations so that projects aimed at eliminating sex segregation can be funded at an appropriate level without reducing the funds available to end segregation based on the other grounds covered by the law; and
3. Establishing a title IX information center to provide information, materials, and technical assistance to General Assistance Centers, training institutes, and State agency training programs funded through title IV.

CREDIT[89]

The IWY Commission recommends that:

1. Each government enforcement agency promptly promulgate and publish rules and regulations to secure compliance with the Equal Credit Opportunity Act (ECOA)—particularly such agencies as the National Credit Union Administration, the Civil Aeronautics Board, the Interstate Commerce Commission, the Packers and Stockyards Administration, the Securities and Exchange Commission, and the Farm Credit Administration.
2. Each enforcement agency promptly revise all compliance forms, handbooks, and other materials used by compliance staff to reflect the requirements of the ECOA and its implementing regulations.
3. An Equal Credit Opportunity Compliance Unit be established in each enforcing agency to direct agency compliance efforts and to process ECOA complaints filed with the agency. Uniform standards and requirements for enforcing ECOA should be promulgated and utilized by the regional offices.
4. The Equal Credit Opportunity Unit of each agency establish procedures to monitor all complaint investigations and compliance reviews conducted by regional offices. The finding and remedial actions taken by regional or central offices should be described in semiannual reports issued by the Equal Credit Opportunity Unit of each agency. These reports should be available for public inspection and should be noted in the *Federal Register* quarterly.
5. Whenever an investigation or compliance review conducted by any enforcing agency indicates reasonable cause to believe that a

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[89] Recommendations approved by Enforcement of the Laws Committee Jan. 8, 1976; by IWY Commission Jan. 16, 1976.

violation of a sex discrimination prohibition of any Federal statute or executive order has occurred, the ECOA enforcing agency immediately notify the agency charged with enforcing that law or executive order. To facilitate this exchange of information, the ECOA enforcing agencies shall promptly enter into Memorandums of Understanding with other Federal agencies and these memorandums shall be published in the *Federal Register*.

6. Each Equal Credit Opportunity Compliance Unit receive adequate funding and staff to carry out its functions. It shall conduct training sessions for compliance personnel and examiners.

OTHER SUPPORT GROUPS

To do a general listing of support groups is to invite the displeasure of those inadvertently omitted; however, it is felt that the following additional groups who offered testimony or prepared written statements in support of Title IX and the proposed Regulations should be noted:

American Federation of State, County and Municipal Employees
Association of Women in Mathematics
Michigan Coalition of Labor Union Women
Modern Language Association of America
National Association of Student Personnel Administrators
United Auto Workers Women's Department, Detroit, Michigan

As the preceding pages have shown, there is much support available to those who find it necessary to do battle against discrimination. Waging such a battle is the right of individuals who feel that they, their colleagues and/or their students are not being provided equal opportunities. However, ending discrimination is more than the *right* of the deprived, it is the *responsibility* of all citizens. Only when people are judged on their individual capabilities will this country live up to its pledge which ends "with liberty and justice for all."

Many groups will give support, but they too need support. Most exist on the dues and volunteer time of their members. The more people who become involved, the less the demands on everyone. Are you doing your part? Steps taken now could leave footprints on the sands of time.

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A. List of Abbreviations

AAC—Association of American Colleges
AAHPER—American Alliance for Health, Physical Education and Recreation
AAUP—American Association of University Professors
ACE—American Council on Education
ACLU—American Civil Liberties Union
AFT—American Federation of Teachers
AIAW—Association for Intercollegiate Athletics for Women
BPW—National Federation of Business and Professional Women's Clubs, Inc.
EEOC—Equal Employment Opportunity Commission
FAPECW—Florida Association of Physical Education for College Women
FCIAW—Florida Commission on Intercollegiate Athletics for Women
HEW—Department of Health, Education and Welfare
NAGWS—National Association for Girls and Women in Sport
NAIA—National Association of Intercollegiate Athletics
NCAA—National Collegiate Athletic Association
NEA—National Education Association
NJCAA—National Junior College Athletic Association
NOW—National Organization for Women
OCR—Office for Civil Rights
OFCC—Office of Federal Contract Compliance
PEER—Project on Equal Education Rights
SAPECW—Southern Association of Physical Education for College Women
WEAL—Women's Equity Action League

B. Federal Laws

Federal Laws[1] and Regulations In Educational

June

This chart updates the one originally prepared in October, 1972 by the Project on

	Executive Order 11246 as amended by 11375	**Title VII of the Civil Rights Act of 1964** as amended by the Equal Employment Opportunity Act of 1972
Effective date	October 13, 1968.	March 24, 1972 (July 1965 for nonprofessional workers). (Institutions with 15–24 employees were covered as of March 24, 1973.)
Which institutions are covered?	All institutions with federal contracts of over $10,000.[2]	All institutions with 15 or more employees.
What is prohibited?[3]	Discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin, or sex. Covers all employees.	Discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin, or sex. Covers all employees.
Exemptions from coverage	None.	Religious institutions are exempt with respect to the employment of individuals of a particular *religion* or *religious order* (including those limited to one sex) to perform work for that institution. (Such institutions are not exempt from the prohibition of discrimination based on sex, color, and national origin.)

and Regulations

Concerning Sex Discrimination Institutions[2]

project on the status and education of **women**

1977

Association of American Colleges

the Status and Education of Women of the Association of American Colleges.

Equal Pay Act of 1963 as amended by the Education Amendments of 1972	**Title IX of the Education Amendments of 1972** as amended by the Bayh Amendment of 1974 (P.L. 93-568, stat. 1862) and the Education Amendments of 1976	**Title VII (Section 799A) & Title VIII (Section 845) of the Public Health Service Act** as amended by the Comprehensive Health Manpower Act & the Nurse Training Amendments Act of 1971.
July 1, 1972 (June, 1964, for nonprofessional workers).	July 1, 1972 (Admissions provisions effective July 1, 1973). The Title IX regulation went into effect on July 21, 1975.[14]	November 18, 1971. The Public Health Service Act regulation went into effect on August 6, 1975.
All institutions.	All institutions receiving federal monies by way of a grant, loan, or contract (other than a contract of insurance or guaranty). Noneducational organizations which operate an education program which receive or benefit from federal financial assistance are also covered.	All institutions receiving or benefiting from a grant, loan guarantee, or interest subsidy to health personnel training programs or receiving a contract under Title VII or VIII of the Public Health Service Act.[23]
Discrimination in salaries (including almost all fringe benefits) on the basis of sex. Covers all employees.	Discrimination against students and employees[15] on the basis of sex.[16]	Sex discrimination in admission of students and against some employees.[24]
None.	*Religious institutions* are exempt if application of the antidiscrimination provisions is not consistent with the religious tenets of such organizations. *Military schools* are exempt if their primary purpose is to train individuals for the military services of the U.S. or the merchant marine. *Discrimination in admissions*[17] is prohibited only in vocational institutions (including vocational high schools), graduate and professional institutions, and public undergraduate coeducational institutions. Additional exemptions were also enacted after Title IX's passage.[18]	None.

Who enforces the provisions?	Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor has policy responsibility and oversees federal agency enforcement programs. OFCCP has designated HEW as the Compliance Agency responsible for enforcing the Executive Order for all contracts with educational institutions. HEW's Office for Civil Rights (OCR) conducts the reviews and investigations.	Equal Employment Opportunity Commission (EEOC.)[10]
How is a complaint made?	By letter to OFCCP, Secretary of Labor, OCR or Secretary of HEW.	By a sworn complaint form, obtainable from EEOC.
Can complaints of a pattern of discrimination be made as well as individual complaints?	Yes. However, individual complaints are generally referred to EEOC. In a few instances individual complaints with class action implications may be handled by OFCCP or OCR.	Yes.
Who can make a complaint?[4]	Individuals and/or organizations on behalf of aggrieved employee(s) or applicant(s). Organizations may also file class or pattern complaints without identifying individuals.	Individuals and/or organizations on behalf of aggrieved employee(s) or applicant(s). Organizations may also file class or pattern complaints without identification of individuals. Members of the commission may also file charges.
Time limit for filing complaints[5]	180 days. OFCCP or HEW may extend the time if "good cause" is shown.	180 days.
Can investigations be made without complaints?	Yes. Government can conduct periodic reviews without a reported violation, as well as in response to complaints. Preaward reviews are mandatory for contracts over $1,000,000.	No. Government can conduct investigations only if charges have been filed.
Can the entire institution be reviewed?	Yes. HEW may investigate part or all of an institution.	Yes. EEOC may investigate part or all of an establishment.
Record keeping requirements and government access to records	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.

Wage and Hour Division of the Employment Standards Administration of the Department of Labor	Federal departments and agencies which extend financial aid to educational programs and activities. HEW's Office for Civil Rights has primary enforcement powers to conduct the reviews and investigations.[19]	HEW's Office for Civil Rights conducts the reviews and investigations.
By letter, telephone call, or in person to the nearest Wage and Hour Division office.	By letter to Secretary of HEW or OCR.	By letter to Secretary of HEW or OCR.
Yes.	Yes.	Yes.
Individuals and/or organizations on behalf of aggrieved employee(s). Organizations may also file class or pattern complaints without identifying individuals.	Individuals and/or organizations on behalf of aggrieved party. Organizations may also file class or pattern complaints without identifying individuals.	Individuals and/or organizations on behalf of aggrieved party. Organizations may also file class or pattern complaints without identifying individuals.
No official limit, but recovery of back wages is limited by statute of limitations to two years for a nonwillful violation and three years for a willful violation.	180 days. HEW may extend the time if "good cause" is shown.	180 days. HEW may extend the time if "good cause" is shown.
Yes. Government can conduct periodic reviews without a reported violation, as well as in response to complaints.	Yes. Government can conduct periodic reviews without a reported violation, as well as in response to complaints.	Yes. Government can conduct periodic reviews without a reported violation, as well as in response to complaints.
Yes. Usually the Wage and Hour Division reviews the entire establishment.	Yes. HEW may investigate those parts of an institution which receive direct federal assistance (as well as other parts of the institution whether or not they receive direct federal assistance). If the institution receives *general institutional aid*, the entire institution may be reviewed.	Yes. HEW may investigate those parts of an institution which receive direct federal assistance under Title VII and VIII (as well as other parts of the institution related to the program, whether or not they receive assistance under these titles).
Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.[20]	Institution must keep and preserve specified records relevant to the determination of whether violations have occurred. Government is empowered to review all relevant records.

Enforcement power and sanctions	If voluntary compliance fails, OFCCP or OCR may institute administrative proceedings to suspend or terminate federal contracts, and to bar future awards, or it may refer the complaint to the Department of Justice with a recommendation for court action. Court may enjoin institution from unlawful behavior; and order salary raises, back pay and other relief. OCR may also delay new awards while seeking voluntary compliance.[8] Whether individual has the right to sue institution is not clear.	If attempts at conciliation fail, EEOC or the U.S. Attorney General may file suit.[11] Aggrieved individuals may also initiate suits. Court may enjoin respondent from engaging in unlawful behavior, order appropriate affirmative action, order reinstatement of employees, and award back pay.
Can back pay be awarded?	Yes. For up to two years for a nonwillful violation and three years for a willful violation.	Yes. For up to two years prior to filing charges with EEOC.
Affirmative action requirements. (There are no restrictions against action which is nonpreferential.)	Written affirmative action plans (including numerical goals and timetables) are required of all contractors with contracts of $50,000 or more and 50 or more employees.[9]	Affirmative action is not required unless charges have been filed, in which case it may be included in conciliation agreement or be ordered by the court.
Coverage of labor organizations	Any agreement the institution may have with a labor organization cannot be in conflict with nondiscrimination or affirmative action provisions of the Executive Order.	Labor organizations are subject to the same requirements and sanctions as employers.
Are grievance procedures required?	Grievance procedures are not required, nor is OFCCP or HEW required to give weight to findings under such procedures.	Grievance procedures are not required, nor is EEOC required to give weight to findings under such procedures.
Is harassment prohibited?	Institutions are prohibited from discharging or discriminating against any employee or applicant for employment because he/she has made a complaint, assisted with an investigation, or instituted proceedings.	Institutions are prohibited from discharging or discriminating against any employee or applicant for employment because he/she has made a complaint, assisted with an investigation, or instituted proceedings.
Notification of complaints	Notification of complaints has been erratic in the past. HEW notifies institutions prior to investigation. Individuals and institutions are supposed to be notified if cases are referred to EEOC.	EEOC notifies institutions of complaints within 10 days.

If voluntary compliance fails,[12] Secretary of Labor may file suit. Aggrieved individuals may initiate suits when Department of Labor has not done so. Court may enjoin respondent from engaging in unlawful behavior, and order salary raises, back pay, and interest.	If voluntary compliance fails, OCR may institute administrative proceedings to suspend or terminate federal monies, and to bar future awards, or it may refer the complaint to the Department of Justice with a recommendation for court action. Court may enjoin the institution from unlawful activities and order equitable relief. OCR may also delay new awards while seeking voluntary compliance.[21] Whether individual has the right to sue institution is not clear.	If voluntary compliance fails, OCR may institute administrative proceedings to suspend or terminate federal monies, and to bar future awards, or it may refer the complaint to the Department of Justice with a recommendation for court action. Court may enjoin the institution from unlawful activities and order equitable relief. OCR may also delay new awards while seeking voluntary compliance.[25] Whether individual has the right to sue institution is not clear.
Yes. For up to two years for a nonwillful violation and three years for a willful violation.	Probably, to the extent that employees are covered.	Probably, to the extent that employees are covered.
Affirmative action, other than salary increases and back pay, is not required.	Affirmative action is not required but may be undertaken by an institution to overcome the effects of conditions which resulted in limited participation by persons of a particular sex. OCR may require remedial actions if discrimination is found.	Affirmative action is not required but may be undertaken by an institution to overcome the effects of conditions which resulted in limited participation by persons of a particular sex. OCR may require remedial actions if discrimination is found
Labor organizations are prohibited from causing or attempting to cause an employer to discriminate on the basis of sex. Complaints may be made and suits brought against these organizations.	Any agreement the institution may have with a labor organization cannot be in conflict with the nondiscrimination provisions of the legislation.	Any agreement the institution may have with a labor organization cannot be in conflict with the nondiscrimination provisions of the legislation.
Grievance procedures are not required, nor is the Wage and Hour Division required to give weight to findings under such procedures.	Grievance procedures are required for students and employees, but there are no specific standards for such procedures, nor is OCR required to give weight to findings under such procedures. Individuals are not required to use the procedures and may file directly with HEW.	Grievance procedures are required for students (and covered employees), but there are no specific standards for such procedures, nor is OCR required to give weight to findings under such procedures. Individuals are not required to use the procedures and may file directly with HEW.
Institutions are prohibited from discharging or discriminating against any employee because he/she has made a complaint, assisted with an investigation, or instituted proceedings.	Institutions are prohibited from discharging or discriminating against any participant or potential participant because he/she has made a complaint, assisted with an investigation, or instituted proceedings.	Institutions are prohibited from discharging or discriminating against any participant or potential participant because he/she has made a complaint, assisted with an investigation, or instituted proceedings.
Complaint procedure is very informal. Employer under review may or may not know that a violation has been reported.	Procedure not fully determined. OCR notifies institutions prior to investigation.[22]	Procedure not determined. OCR notifies institutions prior to investigation.

Confidentiality of names	Individual complainant's name is usually given to the institution. Investigation findings are usually kept confidential by government, but can be revealed by the institution. Policy concerning government disclosure of investigations and complaints has not been issued. The aggrieved party and respondent are not bound by the confidentiality requirement.	Individual complainant's name is divulged when an investigation is made. Charges are not made public by EEOC, nor can any of its efforts during the conciliation process be made public by the commission or its employees. If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and respondent are not bound by the confidentiality requirement.
For further information and relevant documents contact:	Office for Civil Rights Department of HEW Washington, D.C. 20201 *or* Office of Federal Contract Compliance Programs Employment Standards Administration Department of Labor Washington, D.C. 20210 *or* Regional HEW or DOL Office	Equal Employment Opportunity Commission 2401 E Street, N.W. Washington, D.C. 20506 *or* Regional EEOC Office

Relevant documents

Executive Order 11246. "Sex Discrimination Guidelines"; *Federal Register,* June 9, 1970; "Revised Order No. 4—Affirmative Action Programs"; *Federal Register,* December 4, 1971; plus amendments in *Fed. Reg.*, January 31, 1973; February 1, 1973; February 14, 1974; April 12, 1974; July 12, 1974; "HEW Higher Education Guidelines—Executive Order 11246"; October 1, 1972; "Revised Order No. 14—Contractor Evaluation Procedures"; *Federal Register,* February 14, 1974; plus amendments in *Fed. Reg.*, April 12, 1974; July 12, 1974; March 26, 1975; May 28, 1975; "HEW Memorandum to College and University Presidents from Director of OCR"; December, 1974; "Equal Employment Opportunity"; *Federal Register,* January 18, 1977; "Questions and Answers on the Federal Executive Agency Guidelines on Employee Selection Procedures", issued jointly by the Department of Justice, the Department of Labor, and the Civil Service Commission; *Federal Register,* January 21, 1977

Equal Pay Act of 1963. "Equal Pay for Equal Work—Interpretative Bulletin 800"; August 31, 1971; "Extension of the Equal Pay Act of 1963—Fact Sheet"; September 1, 1972

NOTES

General

1. State and local employment and/or human relations laws may also apply to educational institutions. The fourteenth Amendment and other federal laws also prohibit sex discrimination in some instances. The Equal Rights Amendment to the U.S. Constitution, passed by the Congress and now in the process of ratification would, when ratified, forbid sex discrimination in publicly supported schools at all levels and would cover both students and faculty. Additionally, Section 182 of the 1976 Education Amendment reads:

Institutions of higher education receiving federal financial assistance may not use such financial assistance whether directly or indirectly to undertake any study or project or fulfill the terms of any contract containing an express or implied provision that any person or persons of a particular race, religion, sex or national origin be barred from performing such study, project, or contract, except no institution shall be barred from conducting objective studies or projects concerning the nature, effects, or prevention of discrimination, or have its curriculum restricted on the subject of discrimination, against any such person.

The amendment was initially aimed at private contracts between Arab nations and institutions which barred Jews from employment under those contracts. As written, the amendment forbids contract restrictions in employment on the basis of sex, as well as religion, color and national origin, and applies to domestic contracts, as well as those originating overseas. [Note: Restriction in employment under domestic contracts is also clearly prohibited by other statutes.]

2. Unless otherwise specified, "institution" includes public and private colleges and universities, elementary and secondary schools and preschools.

3. A bona fide seniority or merit system is permitted under all legislation, provided the system is not discriminatory on the basis of sex or any other prohibited ground.

Individual complainant's name, as well as that of the employer (and union, if involved), is kept in strict confidence.[13] If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and respondent are not bound by the confidentiality requirement.	Individual complainant's name may be revealed during investigation. If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and the respondent are not bound by any confidentiality requirement.	Individual complainant's name may be revealed during investigation. If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and the respondent are not bound by any confidentiality requirement.
Wage and Hour Division Employment Standards Administration Department of Labor Washington, D.C. 20210 *or* Field, Area, or Regional Wage and Hour Office	Office for Civil Rights Department of HEW Washington, D.C. 20201 *or* Regional HEW Office	Office for Civil Rights Department of HEW Washington, D.C. 20201 *or* Regional HEW Office

Title VII of the Civil Rights Act of 1964. "Guidelines on Discrimination Because of Sex"; *Federal Register*, April 5, 1972; "Guidelines on Employee Selection Procedures"; *Federal Register*, August 1, 1970; reprinted in *Fed. Reg.*, November 23, 1976

Title IX of the Education Amendments of 1972. "Final Title IX Regulation"; *Federal Register*, June 4, 1975; "Memo from Office for Civil Rights—Elimination of Sex Discrimination in Athletic Programs"; September 1975; "Assurance Form for Complying with Title IX—HEW Form 639A"; March, 1977

Title VII (Section 799A) & Title VIII (Section 845) of the Public Health Service Act. "Final Regulations for Titles VII and VIII"; *Federal Register*, July 7, 1975; "Assurance Form for Compliance with Public Health Service Act Titles VII and VIII—HEW Form 590"; March, 1972

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4. There are no restrictions against making a complaint under more than one antidiscrimination law at the same time, or on more than one ground e.g., sex and race, when such discrimination is prohibited by legislation.

5. This time limit refers to the time between an alleged discriminatory act and when a complaint is made. In general, however, the time limit is interpreted liberally when a continuing practice of discrimination is being challenged, rather than a single, isolated discriminatory act.

6. Back pay cannot be awarded prior to the effective date of the legislation.

Executive Order 11246 as amended by 11375

7. The definition of "contract" is very broad and is interpreted to cover virtually all government contracts and including subcontracts and construction contracts. In some instances grants may also be considered as "contracts" covered by the Executive Order.

8. Section 407 of the 1976 Education Amendments requires certain administrative procedures to be followed before any federal funds, including contracts, may be delayed, limited or terminated. The provision applies to local education agencies only.

9. As of January 19, 1973, all covered educational institutions, both public and private, were required to have *written* affirmative action plans.

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972

10. In certain states that have fair employment laws with prohibitions similar to those of Title VII,EEOC automatically defers investigation of charges to the state agency for 60 days. (At the end of this period, EEOC will handle the charges unless the state is actively pursuing the case. About 85 percent of deferred cases return to EEOC for processing after deferral.)

11. EEOC files suit in cases involving private institutions, and the Attorney General files suit in cases involving public institutions.

Equal Pay Act of 1963 as amended by the Education Amendments of 1972

12. Over 95 percent of all Equal Pay Act investigations are resolved through voluntary compliance.
13. Unless court action is necessary, the names of the parties need not be revealed. The identity of a complainant or a person furnishing information is not revealed without that person's knowledge and consent.

Title IX of the Education Amendments of 1972 as amended by P.L. 93–568, 88 Stat. 1862 and the Education Amendments of 1976

(Minority females are also protected from discrimination on the basis of their race, color or national origin under Title VI of the Civil Rights Act of 1964, which covers beneficiaries of, and participants in, federally assisted programs.)
14. Elementary schools were required to be in compliance with the physical education and athletic provisions of the regulation by July 21, 1976. The adjustment period for physical education and athletic programs operated by secondary and post-secondary institutions ends on July 21, 1978. HEW has stated that the adjustment period is *not* a waiting period and that institutions should move into compliance as quickly as possible. [Note: the period applies *only* to physical education and athletic programs.]
15. The sex discrimination provisions of Title IX are patterned after Title VI of the Civil Rights Act of 1964, which forbids discrimination on the basis of race, color, and national origin in all federally assisted programs. By specific exemption, the prohibitions of Title VI do not cover employment practices (except where the primary objective of the federal aid is to provide employment). However, there is no similar exemption for employment in Title IX and the Title IX regulation covers employment. In *Romeo Community Schools v. United States Department of Health, Education and Welfare* [Civil Action 6–71438, U.S. District Court, E.D. Mich., (April 7, 1977)] the District Court opinion rejected HEW's position that Title IX covers employees. Contrary to earlier reports, the District Court's final order, issued on May 18, 1977, was limited to only one section of the Title IX regulation dealing with pregnancy: Section 86.57 was declared invalid. The order affects only the Eastern District of Michigan. The government has indicated that it will appeal the order, and HEW has directed its regional offices to continue to enforce that section of the Title IX regulation throughout the rest of the country, pending final disposition of the question. The District Court's order does *not* affect other sections of the Title IX regulation concerning employment, nor does it affect provisions of other laws or regulations covering employment.

16. Title IX states that: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

17. The following are exempted from the admissions provision:

- *Private undergraduate institutions.*
- *Elementary and secondary schools other than vocational schools.*
- *Single-sex public undergraduate institutions* (if single-sex public undergraduate institutions decide to admit both sexes, they have until June 23, 1979 to admit female and male students on a nondiscriminatory basis, provided their transition plans are approved by the Commissioner of Education.)

Note 1. *These exemptions apply to admissions only.* Such institutions are still subject to all other antidiscrimination provisions of Title IX.

Note 2. Single-sex professional, graduate, and vocational schools at all levels have until June 23, 1979 to achieve nondiscriminatory admissions, provided their transition plans are approved by the Commissioner of Education.

18. The *membership practices* of the following organizations are exempt:

- *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.*
- *Social Sororities and Fraternities* which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954, and whose active members consist primarily of students in attendance at higher education institutions.
- *Voluntary Youth Service Organizations* which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954, *and* whose membership has traditionally been limited to one sex and principally to persons less than 19 years of age.

Father-son and mother-daughter activities are exempt but if such activities are provided for students of one sex, "opportunities for reasonably comparable activities shall be provided for students of the other sex."

Programs or activities undertaken by the American Legion in connection with *Boys State, Girls State, Boys Nation and Girls Nation* conferences are exempt. Schools may undertake activities for the *promotion of such events* and for the *selection of students* to attend any such conference.

Scholarships or other financial assistance awarded by a post-secondary institution to persons receiving awards in pageants based on a combination of personal appearance, poise and talent, and in which participation is limited to one sex only, are exempt, provided the pageant is in compliance with other nondiscrimination provisions of federal law.

19. Under Title VI of the 1964 Civil Rights Act, which Title IX of the Education Amendments closely parallels, federal agencies which extend aid to educational institutions have delegated their enforcement powers to HEW. A similar delegation of enforcement power is expected under Title IX.

20. Institutions must also maintain on file for at least three years a description of any modifications made as a result of the required institutional self-evaluation and those remedial steps taken to eliminate discrimination.

21. Section 407 of the Education Amendments of 1976 requires certain administrative procedures to be followed before any federal funds may be delayed, limited or terminated. The provision applies to local education agencies only.

22. As a result of a court order (*Adams* v. *Mathews*, Civil Action 3095-70, D.D.C., June 14, 1976), HEW will acknowledge receipt of a complaint within 15 days of its receipt. This order applies only to elementary and secondary schools in 17 Southern and Border states, but the time-frame is likely to be extended to all elementary and secondary schools. Time-frames for post-secondary institutions have not yet been determined.

Title VII & Title VIII of the Public Health Service Act as amended by the Comprehensive Health Manpower Act & the Nurse Training Amendments Act of 1971

23. Schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, allied public health personnel, and nursing are specifically mentioned in Titles VII and VIII. The regulation, issued June 1, 1972 by the Secretary of HEW, specifies that all entities applying for awards under Title VII or VIII are subject to the nondiscrimination requirements of the act.

24. The regulation states: "Nondiscrimination in admission to a training program includes nondiscrimination in all practices relating to applicants to and students in the program, nondiscrimination in the enjoyment of every right, privilege and opportunity secured by admission to the program; and nondiscrimination in all employment practices relating to employees working directly with applicants to or students in the program."

25. Section 407 of the 1976 Education Amendments requires certain administrative procedures to be followed before any federal funds may be delayed, limited or terminated. The provision applies to local education agencies only.

THE PROJECT ON THE STATUS AND EDUCATION OF WOMEN of the Association of American Colleges provides a clearinghouse of information concerning women in education, and works with institutions, government agencies and other associations and programs affecting women in higher education. The project is funded by Carnegie Corporation of New York. Publication of these materials does not necessarily constitute endorsement by AAC or Carnegie Corporation of New York. This publication may be reproduced in whole or part without permission, provided credit is given to the Project on the Status and Education of Women, Association of American Colleges, 1818 R Street, NW, Washington, DC 20009.

Bernice Sandler	*Director*		
Margaret C. Dunkle	*Associate Director*	Arlene Fong Craig	*Staff Assistant*
Francelia Gleaves	*Staff Associate*	Deborah Martinez	*Staff Assistant*
Kay Meckes	*Staff Associate*	Connie Reid	*Staff Assistant*
Kathleen Wilson	*Administrative Associate*		

Association of American Colleges
1818 R Street, N.W., Washington, D.C. 20009 202/387-1300

C. State Laws (Summary)

(Compiled by: Education Commission of the States)

State Labor Laws Affecting Women Employed in Education

State	State Wage (minimum wage provisions)	Hours and Overtime		Special Protective Laws			Equal Pay Law
		Work Ceiling	Overtime Pay	Weight	Seating	Other	
Alabama	—	—	—	—	—	—	—
Alaska	X(A)	—	X	X	—	—	X
Arizona	X(A)	X	—	—	—	—	X
Arkansas	X(A)	X*	X*	—	X	X	X
California	X(B)	—	—	X	X	X	X
Colorado	X(B)	X(C)	—	—	—	X	X
Connecticut	X(A)	—	X	—	—	—	X
Delaware	X(A)	—	—	—	—	—	—
Florida	—	—	—	—	X	X	X
Georgia	X(A)	—	—	—	—	—	X
Hawaii	X(A)	—	X	—	—	—	X
Idaho	X(A)	—	—	—	X	—	X
Illinois	X(A)	X	—	—	—	—	X
Indiana	X(A)	—	—	—	—	—	X
Iowa	—	—	—	—	—	—	—
Kansas	X(B)	X(C)	—	—	X	—	X
Kentucky	X(A)	X	X	—	—	X	X
Louisiana	X(B)	—	—	—	X	—	—
Maine	X(A)	X*	X	—	—	—	X
Maryland	X(A)	—	X	—	—	—	X
Massachusetts	[illegible]	X	X	X	—	—	X
Michigan	[illegible]	X*	—	X	—	X	X
Minnesota	X(A)	—	X	—	—	—	X
Mississippi	—	X	—	—	—	—	—
Missouri	—	X	—	—	X	X	X
Montana	X(A)	X	X	—	X	—	X
Nebraska	X(A)	—	—	—	X	X	X
Nevada	X(A)**	X	X	—	X	X	X
New Hampshire	X(A,B)	X	—	—	X	—	X
New Jersey	X(A)	—	X	—	—	—	X
New Mexico	X(A)	X	X	—	X	—	—
New York	X(A,B)	—	X	—	—	X	X
North Carolina	X(A)	—	X	—	—	X	—
North Dakota	X(B)	X	—	—	—	X	X
Ohio	X(A)	X	X	X	X	X	X
Oklahoma	X(A)	X	—	—	—	—	X
Oregon	X(A)	—	—	X	X	—	X
Pennsylvania	X(A)	X	X	—	X	X	X
Rhode Island	X(A)	X	X	—	—	—	X
South Carolina	—	—	—	—	—	X	—
South Dakota	X(A)	—	—	—	—	—	X

State	State Wage (minimum wage provisions)	Hours and Overtime		Special Protective Laws			Equal Pay Law
		Work Ceiling	Overtime Pay	Weight	Seating	Other	
Tennessee	—	X	—	—	—	X	—
Texas	X(A)	X	—	—	X	X	X
Utah	X(A)	—	X	—	X	X	X
Vermont	X(A)	—	X	—	—	—	X
Virginia	—	X	—	—	X	X	—
Washington	X(A,B)	—	—	—	X	—	X
West Virginia	X(A)	X	X	—	—	—	X
Wisconsin	X(A)	X	X	—	—	X	X
Wyoming	X(A)	—	—	—	X	X	X

---

* —Permit or special agreements must be obtained for overtime work and compensation.
** —Exceptions during probationary period
(A) —Minimum wage laws
(B) —Minimum wage orders
(C) —Minimum hours orders

Recently Enacted Legislation Affecting Women in Education, 1970–74

State	State Constitutional Amendment	Admissions, Treatment of Students and Activities Institutions of		Women as Employees (excluding state labor laws and FEP legislation)	Other Legislation	Equal Rights Amendment (date ratified)
		Higher Education	Elementary/ Secondary Education			
Alabama	—	—	—	—	—	—
Alaska	X	X	—	—	—	4/72
Arizona	—	—	—	—	X	—
Arkansas	—	—	—	—	—	—
California	—	X	X	X	—	11/72
Colorado	X	—	—	—	—	4/72
Connecticut	X	—	X	—	X	3/73
Delaware	—	—	—	—	—	3/72
Florida	—	—	—	—	—	—
Georgia	—	—	—	—	—	—
Hawaii	X	—	—	—	—	3/72
Idaho	—	—	—	—	—	4/72
Illinois	X	—	—	—	—	—
Indiana	a	a	a	a	a	1/77
Iowa	—	—	X	—	—	3/72
Kansas	—	X	—	—	—	3/72
Kentucky	—	—	X	—	—	6/72
Louisiana	—	—	—	—	—	—
Maine	—	—	—	—	—	74
Maryland	X	—	X	X	—	4/72
Massachusetts	X	—	X	—	—	3/72
Michigan	—	X	X	—	—	5/72
Minnesota	—	X	X	—	—	2/73
Mississippi	—	—	—	—	—	—
Missouri	—	—	—	—	—	—
Montana	X	—	—	—	X	74
Nebraska	—	—	—	—	—	3/62*
Nevada	—	—	—	—	—	—
New Hampshire	X	—	—	—	—	3/72
New Jersey	—	—	X	X	X	4/72
New Mexico	X	—	—	—	—	2/73
New York	—	X	X	—	—	5/72
North Carolina	—	—	X	—	—	—
North Dakota	—	—	—	—	—	2/75
Ohio	—	—	—	—	—	2/74
Oklahoma	—	—	—	X	—	—
Oregon	—	—	—	X	—	2/73
Pennsylvania	X	X	X	—	—	9/72
Rhode Island	—	—	—	—	—	4/72
South Carolina	—	X	—	—	—	—
South Dakota	—	—	X	X	X	2/73
Tennessee	—	—	—	X	—	4/72*
Texas	X	—	—	X	—	3/72
Utah	Xb	—	—	—	—	—
Vermont	—	—	—	—	—	2/73

State	State Constitutional Amendment	Admissions, Treatment of Students and Activites Institutions of		Women as Employees (excluding state labor laws and FEP legislation)	Other Legislation	Equal Rights Admendment (date ratified)
		Higher Education	Elementary/ Secondary Education			
Virginia	X	—	—	—	—	—
Washington	X	—	—	X	X	3/73
West Virginia	a	a	a	a	a	4/72
Wisconsin	—	—	X	—	X	4/72
Wyoming	Xb	—	—	—	—	1/73

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* —Rescinded by referendum in 1974.

— —No relevant legislation has come to our attention.

a —To date, the legislative service agency has not supplied information.

b —The Wyoming and Utah constitutions contain equal rights provisions which have been in those documents since they were adopted.

Fair Employment Practices Legislation Affecting Women in Education

State	Coverage			Provisions							
	Employees Covered*	Unions Covered	Employment Agencies	Complaint Procedure	Investigation Procedure	Conciliation Procedure	Hearing Procedure	Cease and Desist Orders	Affirmative Action Orders	Judicial Review	Fine/Jail
Alabama	—	—	—	—	—	—	—	—	—	—	—
Alaska	X	X	X	X	X	X	X	—	X	X	X
Arizona	20	X	X	X	X	X	X	X	—	—	X
Arkansas	—	—	—	—	—	—	—	—	—	—	—
California	5	X	X	X	X	X	X	X	X	X	X
Colorado	6	X	X	X	X	X	X	X	X	X	—
Connecticut	3	X	X	X	X	X	X	X	X	X	—
Delaware	4	X	X	X	X	X	X	X	X	X	—
Florida	X	X	—	—	—	—	X	—	—	—	—
Georgia	—	—	—	—	—	—	—	—	—	—	—
Hawaii	X	X	X	X	X	X	X	X	X	X	X
Idaho	4	X	X	X	X	X	X			X	X
Illinois	25	X	X	X	X	X	X	X	X	X	
Indiana	6	X	X	X	X	X	X	X	X		
Iowa	4	X	X	X	X	X	X	X	X	X	
Kansas	4	X	X	X	X	X	X	X	X	X	
Kentucky	8	X	X	X	X	X	X	X	X	X	
Louisiana	—	—	—	—	—	—	—	—	—	—	—
Maine	X	X	X	X	X	X					
Maryland	15	X	X	X	X	X	X	X	X	X	X
Massachusetts	8	X	X	X	X	X	X	X	X	X	
Michigan	8	X	X	X	X	X	X	X	X		
Minnesota	8	X	X	X	X	X	X	X	X	X	
Mississippi	—	—	—	—	—	—	—	—	—	—	—
Missouri	6	X	X	X	X	X	X	X	X	X	
Montana	X	X	X								X
Nebraska	25	X	X	X	X	X	X	X	X	X	X
Nevada	15	X	X	X	X		X			X	
New Hampshire	6	X	X	X	X	X	X	X	X	X	
New Jersey	X	X	X	X	X	X	X	X	X	X	X
New Mexico	4	X	X	X	X	X	X	X	X	X	
New York	4	X	X	X	X	X	X	X	X	X	X
North Carolina	**										
North Dakota	—	—	—	—	—	—	—	—	—	—	—
Ohio	4	X	X	X	X	X	X	X	X	X	X
Oklahoma	25	X	X	X	X	X	X	X	X	X	
Oregon	X	X	X	X	X	X	X	X		X	X
Pennsylvania	4	X	X	X	X	X	X	X	X	X	X
Rhode Island	4	X	X	X	X	X	X	X	X	X	
South Carolina	**			X	X	X	X	X	X		—
South Dakota	X	X	X	X	X	X	X	X	X	X	
Tennessee	—	—	—	—	—	—					
Texas	**										X
Utah	25	X	X	X	X	X	X	X	X	X	
Vermont	X	X	X								X
Virginia	—	—	—	—	—	—	—	—	—	—	

	Coverage			Provisions							
State	Employees Covered*	Unions Covered	Employment Agencies	Complaint Procedure	Investigation Procedure	Conciliation Procedure	Hearing Procedure	Cease and Desist Orders	Affirmative Action Orders	Judicial Review	Fine/Jail
Washington	8	X	X	X	X	X	X	X	X	X	X
West Virginia	12	X	X	X	X	X	X	X	X	X	X
Wisconsin	X	X	X	X	X	X	X	X	X	X	
Wyoming	2	X	X	X	X	X	X	X	X		

---

* —The numbers in this column indicate the minimum number of employees an employer must have to be covered by the law. An "X" indicates that no minimum number of employees is specified in the law.

** —These states have a statutory provision concerning equal employment opportunity for public employment only.

— —These states have no statutory provision concerning equal employment opportunity for public employment only.

— —These states have no statutory provision of general application concerning equal employment opportunity.

A blank entry indicates that a state's law does not include a certain provision or type of coverage.

D. U.S. Equal Employment Opportunity Commission

REGIONAL OFFICES

ALBUQUERQUE/Suite 1000. First National Bank Building East. 5301 Central Avenue, N. E., Albuquerque, NM 87108—Arizona, Colorado, New Mexico, Utah, Wyoming.

ATLANTA/Room 440, 1776 Peachtree Street, S. W., Atlanta, GA 30309—Florida, Georgia, North Carolina, South Carolina, Virgin Islands, Canal Zone.

AUSTIN/Room G115, 300 East 8th Street, Austin, TX 78701—Texas.

BIRMINGHAM/Suite 824, 2121 Eighth Avenue, Birmingham, AL 35203—Alabama, Tennessee, east of the Tennessee River.

CHICAGO/Room 1832, U. S. Court House and Federal Building, 219 South Dearborn Street, Chicago, IL 60604—Illinois, Indiana, Minnesota, North Dakota, South Dakota, Wisconsin.

CLEVELAND/Room 402, Engineers' Building, 1365 Ontario Street, Cleveland, OH 44114—Kentucky, Michigan, Ohio, Pennsylvania.

KANSAS CITY/Room 305, 911 Walnut Street, Kansas City, MO 64106—Iowa, Kansas, Missouri, Nebraska, Oklahoma.

LOS ANGELES/Room 340, 1543 West Olympic Boulevard, Los Angeles, CA 90015—California (Southern: San Luis Obispo, Kern and San Bernardino Counties and territory south), Hawaii, Nevada, American Samoa, Guam, Wake Island.

MEMPHIS/Suite 1004, The Dermon Building, 46 North Third Street, Memphis TN 38103—Arkansas, Tennessee west of the Tennessee River, and Mississippi north of the Jackson.

NEW ORLEANS/Masonic Temple Building, 333 St.Charles Avenue, New Orleans, LA 70130—Louisiana, Mississippi, to the south of, and including Jackson.

NEW YORK/Room 1306, 26 Federal Plaza (in Foley Square), New York, NY 10007—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont.

SAN FRANCISCO/Room 701, 1095 Market Street, San Francisco, CA 94103—Alaska, California (Northern: Territory north of San Luis Obispo, Kern and San Bernardino County lines), Idaho, Montana, Oregon, Washington.

WASHINGTON DC/Suite 413, 1717 H Street, N. W., Washington, DC 20506—Delaware, District of Columbia, Maryland, Virginia, West Virginia.

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E. EEOC Complaint Form

HOW TO FILE A COMPLAINT AGAINST UNLAWFUL JOB DISCRIMINATION

Charges can be filed by any person working in a firm where there are at least 25 or more people who feels that she has been discriminated against in her job. The company, union, or employment agency is forbidden by law to punish you for filing a charge, for acting as a witness, or for assisting the Commission to establish the cause for the charge.

You can complain *if*—

an employer refuses to hire you when you are qualified for a job opening;
an employer refuses to let you file a job application but accepts other applicants;
a union or employment agency refuses to refer you for a job opening;
a union refuses to accept you into membership;
you are fired or laid off without cause;
you are passed over for promotion for which you are qualified;
you are paid less than others for comparable work;
you are placed in segregated seniority lines;
you are left out of training or apprenticeship programs—*and if* the reason for any of these acts is that you are *female*.

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CHARGE OF DISCRIMINATION

EEOC CHARGE NO.

FORM APPROVED
OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

☐ RACE OR COLOR ☐ SEX
☐ RELIGIOUS CREED
☐ NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)*

DATE OF BIRTH

STREET ADDRESS

COUNTY

SOCIAL SECURITY NO.

CITY, STATE, AND ZIP CODE

TELEPHONE NO. *(Include area code)*

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)*

TELEPHONE NO. *(Include area code)*

STREET ADDRESS

CITY, STATE, AND ZIP CODE

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME

TELEPHONE NO. *(Include area code)*

STREET ADDRESS

CITY, STATE, AND ZIP CODE

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY
☐ YES ☐ NO

DATE FILED

AGENCY CHARGE FILED WITH *(Name and address)*

COMPLETE THIS FORM and send to U.S. Equal Employment Opportunity Commission, 1800 G Street, N.W. Washington, D.C. 20506 for addresses of regional offices.

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE	CHARGING PARTY *(Signature)*

Subscribed and sworn to before this EEOC representative.

DATE	SIGNATURE AND TITLE

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EEOC FORM JUN 72 **5** Previous editions of this form may be used.

U.S. GOVERNMENT PRINTING OFFICE : 1973—728-451/1250 3-I
GPO 871-188

F. HEW Regional Offices

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont):
RKO General Building
Bulfinch Place
Boston, MA 02114
(617) 223-6397

Region II (New Jersey, New York, Puerto Rico, Virgin Islands):
26 Federal Plaza
New York, NY 10007
(212) 264-4633

Region III (Delaware, DC, Maryland, Pennsylvania, Virginia, West Virginia):
Gateway Building
3535 Market Street
Philadelphia, PA 19104
(215) 597-4148

Region IV Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee):
50 Seventh Street, N.E.
Atlanta, GA 30323
(404) 526-3312

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309 West Jackson Boulevard
Chicago, IL 60606
(312) 353-7742

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas):
1114 Commerce Street
Dallas TX 75202
(214) 749-3301

Region VII (Iowa, Kansas, Missouri, Nebraska):
Twelve Grand Building
12th and Grand Avenue
Kansas City, MO 64106
(816) 374-2474

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming):
Federal Building
1961 Stout Building
Denver, CO 80202
(303) 837-2025

Region IX (Arizona, California, Hawaii, Nevada):
Phelan Building
760 Market Street
San Francisco, CA 94102
(415) 556-8586

Region X (Alaska, Idaho, Oregon, Washington):
Arcade Plaza Building
1321 Second Avenue
Seattle, WA 98101
(206) 442-0473

U.S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
Office for Civil Rights
Washington, DC 20201—(202) 245-6700

G. HEW September Title IX Guidelines

September 1975

TO: Chief State School Officers, Superintendents of Local Educational Agencies and College University Presidents

FROM: Director, Office for Civil Rights

SUBJECT: Elimination of Sex Discrimination in Athletic Programs

Title IX of the Education Amendments of 1972 and the Departmental Regulation (45 CFR Part 86) promulgated thereunder prohibit discrimination on the basis of sex in the operation of most federally assisted education programs. The regulation became effective on July 21, 1975.

During the forty-five day period immediately following approval by the President and publication on June 4, 1975, concerns were raised about the immediate obligations of educational institutions to comply with certain sections of the Departmental Regulation as they relate to athletic programs. These concerns, in part, focus on the application of the adjustment period provision (86.41 (d)) to the various non-discrimination requirements, and additionally, on how education institutions can carry out the self-evaluation requirement (86.3(c)).

This memorandum provides guidance with respect to the major first year responsibilities of an educational institution to ensure equal opportunity in the operation of both its athletic activities and its athletic scholarship programs. Practical experience derived from actual on-site compliance reviews and the concomitant development of greater governmental expertise on the application of the Regulation to athletic activities may, of course, result in further or revised guidance being issued in the future. Thus, as affected institutions proceed to conform their programs with the Departments regulation, they and other interested persons are encouraged to review carefully the operation of these guidelines and to provide the Department with the benefit of their views.

Basic Requirements

There are two major substantive provisions of the regulation which define the basic responsibility of educational institutions to provide equal opportunity to members of both sexes interested in participating in the athletics programs institutions offer.

Section 86.41 prohibits discrimination on the basis of sex in the operation of any interscholastic, intercollegiate, club or intramural athletic program offered by an educational institution. Section 86.37(c) sets forth requirements for ensuring equal opportunity in the provision of athletic scholarships.

These sections apply to each segment of the athletic program of a federally assisted educational institution whether or not that segment is the subject of direct financial support through the Department. Thus, the fact that a particular segment of an athletic program is supported by funds received from various other sources (such as student fees, general revenues, gate receipts, alumni donations, booster clubs, and non-profit foundations) does not remove it from the reach of the statute and hence of the regulatory requirements. However, drill teams, cheerleaders and the like, which are covered more generally as extracurricular activities under section 86.31, and instructional offerings such as physical education and health classes, which are covered under section 86.34, are not a part of the institution's "athletic program" within the meaning of the regulation.

Section 86.41 does not address the administrative structure(s) which are used by educational institutions for athletic programs. Accordingly, institutions are not precluded from employing separate administrative structures for men's and women's sports (if separate teams exist) or a unitary structure. However, when educational institutions evaluate whether they are in compliance with the provisions of the regulation relating to non-discrimination in employment, they must carefully assess the effects on employees of both sexes of current and any proposed administrative structure and related coaching assignments. Changes in current administrative structure(s) or coaching assignments which have a *disproportionately adverse effect on the employment* opportunities of employees of one sex are prohibited by the regulation.

Self-Evaluation and Adjustment Periods

Section 86.3(c) generally requires that by July 21, 1976, educational institutions (1) carefully evaluate current policies and practices (including those related to the operation of athletic programs) in terms of compliance with those provisions and (2) where such policies or practices are inconsistent with the regulation, conform current policies and practices to the requirements of the regulation.

An institution's evaluation of its athletic program must include every area of the program covered by the regulation. All sports are to be included in this overall assessment, whether they are contact or non-contact sports.

With respect to athletic programs, section 86.41 (d) sets specific time limitations on the attainment of total conformity of institutional policies and practices with the requirements of the regulation—up to one year for elementary schools and up to three years for all other educational institutions.

Because of the integral relationship of the provision relating to athletic scholarships and the provision relating to the operation of athletic programs, the adjustment periods for both are the same.

The adjustment period is *not* a waiting period. Institutions must begin now to take whatever steps are necessary to ensure full compliance as quickly as possible. Schools may design an approach for achieving full compliance tailored

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to their own circumstances; however, self-evaluation, as required by section 86.3 (c) is a very important step for every institution to assure compliance with the entire Title IX regulation, as well as with the athletic provisions.

Required First Year Actions

School districts, as well as colleges and universities, are obligated to perform a self-evaluation of their entire education program, including the athletics program, prior to July 21, 1976. School districts which offer interscholastic or intramural athletics at the elementary school level must immediately take significant steps to accommodate the interests and abilities of elementary school pupils of both sexes, including steps to eliminate obstacles to compliance such as inequities in the provision of equipment, scheduling and the assignment of coaches and other supervisory personnel. As indicated earlier, school districts must conform their total athletic program at the elementary level to the requirements of section 86.41 no later than July 21, 1976.

In order to comply with the various requirements of the regulation addressed to nondiscrimination in athletic programs, educational institutions operating athletic programs above the elementary level should:

(1) Compare the requirements of the regulation addressed to nondiscrimination in athletic programs and equal opportunity in the provision of athletic scholarships with current policies and practices;

(2) Determine the interests of both sexes in the sports to be offered by the institution and, where the sport is a contact sport or where participants are selected on the basis of competition, also determine the relative abilities of members of each sex for each such sport offered, in order to decide whether to have single sex teams or teams composed of both sexes. (Abilities might be determined through try-outs or by relying upon the knowledge of athletic teaching staff, administrators and athletic conference and league representatives.)

(3) Develop a plan to accommodate effectively the interests and abilities of both sexes, which plan must be fully implemented as expeditiously as possible and in no event later than July 21, 1978. Although the plan need not be submitted to the Office for Civil Rights, institutions should consider publicizing such plans so as to gain the assistance of students, faculty, etc. in complying with them.

Assessment of Interests and Abilities

In determining student interests and abilities as described in (2) above, educational institutions as part of the self-evaluation process should draw the broadest possible base of information. An effort should be made to obtain the participation of all segments of the educational community affected by the athletics program, and any reasonable method adopted by an institution to obtain such participation will be acceptable.

Separate Team

The second type of determination discussed in (2) above relates to the manner in which a given sports activity is to be offered. Contact sports and sports for which teams are chosen by competition may be offered either separately or on a unitary basis.

Contact sports are defined as football, basketball, boxing, wrestling, rugby, ice hockey and any other sport the purpose or major activity of which involves bodily contact. Such sports may be offered separately.

If by opening a team to both sexes in a contact sport an educational institution does not effectively accommodate the abilities of members of both sexes (see 86.41(c) (i)), separate teams in that sport will be required if both men and women express interest in the sport and the interests of both sexes are not otherwise accommodated. For example, an institution would not be effectively accommodating the interests and abilities of women if it abolished all its women's teams and opened up its men's teams to women, but only a few women were able to qualify for the men's team.

Equal Opportunity

In the development of the total athletic program referred to in (3) above, educational institutions, in order to accommodate effectively the interests and abilities of both sexes, must ensure that equal opportunity exists in both the conduct of athletic programs and the provision of athletic scholarships.

Section 86.41(c) requires equal opportunity in athletic programs for men and women. Specific factors which should be used by an educational institution during its self-evaluative planning to determine whether equal opportunity exists in its plan for its total athletic program are:

—the nature and extent of the sports programs to be offered (including the levels of competition, such as varsity, club, etc.);
—the provision of equipment and supplies;
—the scheduling of games and practice time;
—the provision of travel and per diem allowances;
—the nature and extent of the opportunity to receive coaching and academic tutoring;
—the assignment and compensation of coaches and tutors;
—the provision of locker rooms, practice and competitive facilities;
—the provision of medical and training facilities and services;
—the provision of housing and dining facilities and services;
—the nature and extent of publicity.

Overall Objective

The point of the regulation is not to be so inflexible as to require identical treatment in each of the matters listed under section 86.41(c). During the process of self-evaluation, institutions should examine *all* of the athletic opportunities for men and women and make a determination as to whether each has an equal opportunity to compete in athletics in a meaningful way. The equal opportunity emphasis in the regulation addresses the totality of the athletic program of the institution rather than each sport offered.

Educational institutions are not required to duplicate their men's program for women. The thrust of the effort should be on the contribution of each of the categories to the overall goal of equal opportunity in athletics rather than on the details related to each of the categories.

While the *impact* of expenditures for sex identifiable sports programs should be carefully considered in determining whether equal opportunity in athletics exists for both sexes, equal aggregate expenditures for male and female teams are not required. Rather, the pattern of expenditures should not result in a disparate effect on opportunity. Recipients must not discriminate on the basis of sex in the provision of necessary equipment, supplies, facilities, and publicity for sports programs. The fact that differences in expenditures may occur because of varying costs attributable to differences in equipment requirements and levels of spectator interest does not obviate in any way the responsibility of educational institutions to provide equal opportunity.

Athletic Scholarships

As part of the self-evaluation and planning process discussed above, educational institutions must also ensure that equal opportunity exists in the provision of athletic scholarships. Section 86.37(c) provides that "reasonable opportunities" for athletic scholarships should be "in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."

Following the approach of permitting separate teams, section 86.37(c) of the regulation permits the overall allocation of athletic scholarships on the basis of sex. No such separate treatment is permitted for non-athletic scholarships.

The thrust of the athletic scholarship section is the concept of reasonableness, not strict proportionality in the allocation of scholarships. The degree of interest and participation of male and female students in athletics is the critical factor in determining whether the allocation of athletic scholarships conforms to the requirements of the regulation.

Neither quotas nor fixed percentages of any type are required under the regulation. Rather, the institution is required to take a reasonable approach in its award of athletic scholarships, considering the participation and relative interests and athletic proficiency of its students of both sexes.

Institutions should assess whether male and female athletes in sports at comparable levels of competition are afforded approximately the same opportunities to obtain scholarships. Where the sports offered or the levels of competition differ for male and female students, the institution should assess its athletic scholarship program to determine whether overall opportunities to receive athletic scholarships are *roughly proportionate* to the number of students of each sex participating in intercollegiate athletics.

If an educational institution decides not to make an overall proportionate allocation of athletic scholarships on the basis of sex, and thus, decides to award such scholarships by other means such as applying general standards to applicants of both sexes, institutions should determine whether the standards used to award scholarships are neutral, *i.e.* based on criteria which do not inherently disadvantage members of either sex. There are a number of "neutral" standards which might be used including financial need, athletic proficiency or a combination of both. For example, an institution may wish to award its athletic scholarships to all applicants on the basis of need after a determination of a certain level of athletic proficiency. This would be permissible even if it results in a pattern of award which differs from the relative levels of interests or participation of men and women students so long as the initial determination of athletic proficiency is based on neutral standards. However, if such standards are not neutral in substance or in application then different standards would have to be developed and the use of discriminatory standard discontinued. For example, when "ability" is used as a basis for scholarship award and the range of ability in a particular sport, at the time, differs widely between the sexes, separate norms must be developed for each sex.

Availability of Assistance

We in the Office for Civil Rights will be pleased to do everything possible to assist school officials to meet their Title IX responsibilities. The names, addresses and telephone numbers of Regional Offices for Civil Rights can be found in Appendix F.

PETER E. HOLMES

OCR INTERPRETATION OF THE TITLE IX REGULATIONS AS IT CONCERNS SEX SEPARATE DEPARTMENTS OF PHYSICAL EDUCATION AND ATHLETICS

ISSUE: May a recipient educational institution operate sex separate departments of physical education or athletics?

Several provisions of the Title IX regulation must be considered in reaching the answer to this issue. Section 83.34 of the regulation contains two substantive requirements specifically regarding physical education: (1) programs and activities in physical education must be open to all students without regard to sex, although nonsex-based ability groupings within classes are permitted (section 86.34(b)), and (2) groupings by sex within classes are permitted when the activity involved is a contact sport (section 86.34(c)). In addition, section 86.55 of the regulation prohibits classification of jobs as being for males or females. Therefore, consistent with the regulation, an institution may maintain men's and women's physical education departments if the physical education program as a whole satisfies these provisions. Similarly, separate men's and women's athletic departments may be operated provided the overall operation of the institution's athletic program complies with section 86.41 of the regulation and its employment practices within these departments comply with section 86.55 as noted above.

Merger of previously men's and women's physical education departments

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would comply with Title IX provided decisions relating to the placement of employees within the new structure are not based on sex (section 86.51(a) (2)). In addition, the regulation precludes use of employment criteria which have a disproportionately adverse impact on members of one sex unless the criteria are shown to predict validly successful performance in the position and alternative criteria which do not result in such a disproportionately adverse effect are shown to be unavailable (section 86.52).

OCR is concerned that department mergers may result in placement of the administrators of former men's departments in positions of more stature or pay than those to which administrators of former women's departments are assigned, although no demonstrated difference in qualifications may exist. This concern stems from current information we have received, which indicates that in merging previously separate men's and women's physical education departments, the resulting unitary departments are administered by men in a disproportionately high number of instances.

Therefore, institutions should give special attention to several requirements in the regulation which, if disregarded, could render the merger violative of the statute:

(1) Assignments of faculty and staff to and within the consolidated department may not be made in a discriminatory manner (section 86.51);

(2) Where pay scales and seniority or tenure scales must be adjusted, the adjustments must be made in a nondiscriminatory manner (section 86.54 and section 86.55); and

(3) Opportunities for students in physical education may not be increased or reduced for men or women in a way which would discriminate on the basis of sex (section 86.34).

An educational institution's evaluation of whether its physical education or athletics program is in compliance with the regulatory requirements concerning nondiscriminatory employment practices should include a careful assessment of the effects on employees of both sexes of the current administrative structure and of teaching and coaching assignments. The evaluation should also address the effects of any changes in structure or assignment that are under consideration.

Title IX places on recipient institutions the responsibility to assure that the process of selecting those placed in positions of administrative responsibility does not discriminate on the basis of sex. Further, if past discriminatory practices of an institution have placed members of one sex at a disadvantage in terms of acquiring the necessary experience and/or education to make them eligible for selection or assignment to an administrative position, it is the responsibility of the institution to provide promptly the training and opportunity for experience necessary to qualify these employees for such positions.

MARTIN H. GERRY
Director
Office for Civil Rights

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H. National Coalition for Women and Girls in Education

American Alliance for Health, Physical Education and Recreation
Attn: Marjorie Blaufarb
1201 16th Street, N.W.
Washington, DC 20036
(202) 833-5553

American Association of School Administrators (AASA)
Sex Equality in Education Project
Attn: Lois Banda
1801 N. Moore Street
Arlington, VA 22209
(703) 528-0700

American Association of University Professors (AAUP)
Committee W
Attn: Carol Polowy
One Dupont Circle, Suite 500
Washington, DC 20036
(202) 466-8050

American Association of University Women (AAUW)
Attn: Ellen McGovern
2401 Virginia Avenue, N.W.
Washington, DC 20037
(202) 785-7759

American Civil Liberties Union (ACLU)
Women's Rights Project
Attn: Kathleen Willert Peratis/Susan Ross
22 East 40th Street
New York, NY 10016
(212) 725-1222

American Council on Education (ACE)
Office of Women in Higher Education
Attn: Donna Shavlik/Emily Taylor
One Dupont Circle #831
Washington, DC 20036
(202) 833-4692

American Psychological Association
Committee on Women
Attn: Tena Cummings
4201 Cathedral Avenue, N.W.
Washington, DC 20016
(202) 966-6920

American Sociological Association
Attn: Lucy W. Sells
1722 N Street, N.W.
Washington, DC 20036
(202) 833-3410

Association for Intercollegiate Athletics for Women (AIAW)
Attn: Margot Polivy/Joan Warrington
1532 16th Street, N.W.
Washington, DC 20036
(202) 265-1807

Association of American Colleges
Project on the Status and Education of Women
Attn: Margaret Dunkle/Bernice Sandler
1818 R Street, N.W.
Washington, DC 20009
(202) 387-1300

Center for Law and Social Policy
Women's Rights Project
Attn: Lois Schiffer/Marcia Greenberger
1751 N Street, N.W.
Washington, DC 20036
(202) 872-0670

Council on National Priorities and Resources
Attn: Joan Bannon
1620 Eye Street, N.W.
Washington, DC 20006
(202) 293-9114

D.C. Commission on the Status of Women
Attn: Katherine Cole
3652 Warder Street, N.W.
Washington, DC 20010
(202) 291-7400

Education Commission of the States
Equal Rights for Women in Education Project
Attn: Paula Herzmark
Suite 300, 1860 Lincoln Street
Denver, CO 80203
(303) 893-5200, X364

Federation of Organizations for Professional Women
Attn: Jane Aufenkamp/Julia Lear
1346 Connecticut Avenue, N.W.
Room 1122
Washington, DC 20036
(202) 833-1998

Intercollegiate Association of Women Students
Attn: Margy DuVal, President
% Dean Anderson
Susquehanna University
Selinsgrove, PA 17870
(717) 374-8584

Lawyer's Committee for Civil Rights Under Law
Attn: Cindy Brown
Suite 520
733 15th Street, N.W.
Washington, DC 20005
(202) 628-6700

League of Women Voters of the United States
Attn: Judy Norrell
1730 M Street, N.W.
Washington, DC 20036
(202) 296-1770, X247

National Association for Girls and Women in Sport (NAGWS)
Attn: Karen Johnson
1201 16th Street, N.W.
Washington, DC 20036
(202) 833-5540

National Association for Women Deans, Administrators and Counselors
Attn: Joan McCall
1028 Connecticut Avenue, N.W.
Suite 922
Washington, DC 20036
(202) 659-9330

National Association of State Universities and Land Grant Colleges
Attn: Sue Fratkin
One Dupont Circle
Suite 710
Washington, DC 20036
(202) 293-7120

National Council of Jewish Women
Attn: Olya Margolin
1346 Connecticut Avenue, N.W. #924
Washington, DC 20036
(202) 296-2588

National Education Association (NEA)
Teacher Rights
Attn: Shirley McCune/Betty Sinowitz
1201 16th Street, N.W. #405
Washington, DC 20036
(202) 833-4225

National Federation of Business and Professional Women's Clubs, Inc.
Attn: Judy Stafford
2012 Massachusetts Avenue, N.W.
Washington, DC 20036
(202) 293-1100

National Foundation for Improvement of Education
Resource Center on Sex Roles in Education
Attn: Irene Chung/Martha Matthews
1156 15th Street, N.W.
Suite 918
Washington, DC 20005
(202) 833-5426

National Organization for Women
Legislative Office
Attn: Peggy Strout
1266 National Press Building
Washington, DC 20045
(202) 347-2279

National Organization for Women
National Coordinator of the Education Task Force
Attn: Mary Ellen Verheyden-Hilliard
3747 Huntington Street, N.W.
Washington, DC 20015
(202) 483-4633

National Student Association
2115 S Street, N.W.
Washington, DC 20008
(202) 265-9890
Attn: Clarissa Gilbert/Grace Mastalli
1638 17th Street, N.W. #2
Washington, DC 20009
(202) 462-5556

National Student Lobby
Attn: Jay Henderson
2000 P Street, N.W. #515
Washington, DC 20036
(202) 833-3116

National Urban League
Attn: Maudine Cooper
425 13th Street, N.W.
Washington, DC 20004
(202) 393-4332

National Women's Political Caucus
Attn: Jean Miller
6101 16th Street, N.W., Apt. 325
Washington, DC 20011
(202) 829-5574

Project on Equal Education Rights (PEER)
Attn: Holly Knox/Clelia Steele
1029 Vermont Avenue N.W.
Washington, DC 20005
(202) 332-7337

Women's Equity Action League (WEAL)
Attn: Norma Raffel
610 Glenn Road
State College, PA 16801
(814) 237-3462

Women's Equity Action League (WEAL)
Attn: Carolyn Smith
621 South Carolina Avenue
Washington, DC 20003
Attn: Carolyn Smith
(202) 638-4560 or (202) 727-3071
544-3174 (home)

Women's Legal Defense Fund
Attn: Judy Lichtman
1424 16th Street, N.W.
Washington, DC 20036
(202) 232-5293

Women's Lobby
Attn: Carol Burris
1345 G Street, S.E.
Washington, DC 20003
(202) 547-0044

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